

United States
Circuit Court of Appeals⁷

For the Ninth Circuit.

JOE MAZUROSKY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the District of Oregon.

FILED

MAY 19 1933

PAUL P. O'BRIEN,
CLERK

No. 8809

United States
Circuit Court of Appeals
For the Ninth Circuit.

JOE MAZUROSKY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the District of Oregon.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Assignments of Error.....	180
Bill of Exceptions.....	48
Exhibits for the Government:	
1—Check dated October 29, 1934, in the amount of \$450.00 signed by Christian M. Mershon	134
3—Check dated September 12, 1934 to Clara E. Allen in the amount of \$500.00 signed by W. E. Grazzu.....	135
4—Check dated September 20, 1935 to J. C. Adams in the amount of \$500.00 signed by H. F. Belter.....	136
5—Check dated December 6, 1935 to J. C. Adams in the amount of \$300.00 signed by E. C. Deiliera.....	137
7—Check dated November 14, 1925 to O. A. Plummer in the amount of \$500.00 signed by Henry Wagner.....	138
8—Savings Deposit Slip of Joe Mazurosky for the amount of \$450.00 dated October 30, 1934.....	138

Index	Page
Exhibits for the Government (Cont.):	
9—Record of the Bank of California, Portland, concerning a check in the amount of \$500.00 signed by H. F. Belter	140
11—Check dated September 28, 1935 to The Bank of California, Portland, in the amount of \$499.50 signed by J. D. Bliss, Cashier	143
15—Receipt for \$587.50 dated September 23, 1934 to Miss Clara E. Allen signed by J. J. Carson.....	143
26—Check dated December 6, 1935 to J. C. Adams in the amount of \$300.00 signed by E. C. Deibert.....	144
27—Savings deposit slip of Joe Mazurosky for the amount of \$500.00 dated September 20, 1935.....	145
28—Savings deposit slip of Joe Mazurosky for the amount of \$300.00 dated December 6, 1935.....	145
29—Savings withdrawal slip of Joe Mazurosky for the amount of \$500.00 dated September 20, 1935.....	146
30—Duplicate collection receipt for the amount of \$500.00 dated September 25, 1934	147

Index

Page

Exhibits for the Government (Cont.):

31—Collection department check dated September 27, 1934 to Joe Mazurosky in the amount of \$498.60 signed by T. F. Dunn, Cashier.....	148
32—Western Union Money Order Mes- sage dated July 7, 1936.....	149
33—Western Union Money Order Record dated July 7, 1936.....	150
34—Western Union Money Order Mes- sage dated October 20, 1934.....	151

Witnesses for the Government:

Allen, Miss Clara E.	
—direct	101
Allen, Donald G.	
—direct	107
—cross	111
—redirect	112
—cross	113
Belter, H. F.	
—direct	65
Belter, Mrs. H. F.	
—direct	67
Bliss, J. L.	
—direct	115
—cross	117

Index	Page
Witnesses for the Government (Cont.):	
Deibert, Ernest C.	
—direct	75
Dubois, Lloyd	
—direct	83
—cross	85
Eichenberger, Albert	
—direct	106
Geenty, Robert C.	
—direct	118
—cross	120
—redirect	121
Goltz, John	
—direct	73
—cross	74
Goldman, Robert E.	
—direct	114
—cross	115
—redirect	115
Gray, John M.	
—direct	86
—cross	95
—redirect	98
Horack, Mr. Herman H.	
—direct	103
—cross	104
—redirect	105

Index	Page
Witnesses for the Government (Cont.):	
Keller, Frank L.	
—direct	129
—cross	130
—redirect	131
Manciet, L. D.	
—direct	81
Mershon, Mrs. Christine	
—direct	99
Munley, E. F.	
—direct	107
Nelson, Frank	
—direct	49
—cross	61
—redirect	65
Powell, O. A.	
—direct	77
Thorsen, A. C.	
—direct	131
Wagner, Henry	
—direct	68
—cross	71
—recalled, direct	83
—cross	83
Wagner, William	
—direct	72

Index	Page
Witnesses for the Government (Cont.):	
Welter, C. B.	
—direct	48
—recalled, direct	132
—cross	133
—redirect	133
Williams, W. E.	
—direct	79
—cross	80
Certificate to Transcript of Record on Appeal..	47
Indictment	4
Judgment and Sentence.....	41
Notice of Appeal.....	1
Order Extending Time to File Bill of Excep- tions	43
Praeceptum for Transcript of Record on Appeal..	46
Record of Arraignment and Plea of Not Guilty	36
Record of Trial and Motion for Directed Ver- dict	36
Record of Trial, Order on Motion for Directed Verdict, and Record of Verdicts.....	37
Stipulation for Transcript of Record on Appeal	44
Verdict of Guilty.....	40

NAMES AND ADDRESSES OF THE
ATTORNEYS OF RECORD

EDWIN D. HICKS,
515 Pacific Building,
Portland, Oregon,
for the Appellant

CARL C. DONAUGH,
United States Attorney,

J. MASON DILLARD and

MANLEY B. STRAYER,

Assistant United States Attorneys
for the Appellee.

In the District Court of the United States
for the District of Oregon

No. C-15297

UNITED STATES OF AMERICA,

vs.

JOE MAZUROSKY,

Defendant.

NOTICE OF APPEAL

Name and address of appellant: Joe Mazurosky,
202 N. W. 6th St., Portland, Oregon.

Name and address of appellant's attorney: Ed-
win D. Hicks, 515 Pacific Bldg., Portland, Oregon.

Offense: Crime of unlawfully using United States mails in furtherance of a scheme to defraud, as charged in Count 4 of the indictment; unlawfully conspiring to use the United States mails in furtherance of a scheme to defraud, as charged in Count 7 of the indictment, and unlawfully conspiring to use the United States mails in furtherance of a scheme to defraud, as charged in Count 8 of the indictment.

Date of Judgment: March 19th, 1938.

Brief Description of Judgment, or Sentence:

A fine of \$1,000 and imprisonment in a Federal penitentiary for 5 years, and from and after the expiration of said term until said fine be paid, for the offense charged in Count 4 of the indictment; a fine in the sum of \$5,000 and imprisonment for 2 years in a Federal penitentiary, and from and after the expiration of said term until said fine be paid, on Count 7 of the indictment; a fine in the sum of \$5,000 and imprisonment for 2 years in a Federal penitentiary, and from and after the expiration of said term until said fine be paid, on Count 8 of the indictment; Counts 7 and 8 to run concurrently and to begin to run after termination of sentence imposed for the offense charged in Count 4 of the indictment, making a total sentence of \$11,000 and 7 years imprisonment.

Name of prison where now confined if not on bail; Multnomah County Jail, Multnomah County Court House, Portland, Oregon.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the 9th Circuit from the judgment above mentioned, on the grounds set forth below.

JOE MAZUROSKY

Appellant

EDWIN D. HICKS

Attorney for Appellant

Dated: March 24th, 1938. [1*]

Grounds of Appeal:

1. Error in overruling and denying defendant's Motion for a directed verdict as to Counts 4, 7 and 8 of the indictment.

2. Error in admitting testimony of transactions not pleaded in the indictment and occurring 9 years before the first offense set forth in the indictment.

3. Error in admitting declarations of one Roy Martin to prove an alleged conspiracy between the defendant and the said Roy Martin.

4. Error in the form and substance of the sentence imposed.

State of Oregon,
County of Multnomah—ss.

Due service of the within Notice of Appeal is hereby accepted in Multnomah County, Oregon, this 24th day of March, 1938, by receiving a copy

*Page numbering appearing at the foot of page of original certified Transcript of Record.

thereof, duly certified to as such by Edwin D. Hicks,
of Attorneys for Defendant and Appellant.

CARL C. DONAUGH

United States Attorney for
the District of Oregon

By J. MASON DILLARD
Deputy.

[Endorsed]: Filed Mar. 24. 1938. [2]

In the District Court of the United States for the
District of Oregon.

November Term, 1937

Be it remembered, that on the 8th day of February, 1938, there was duly filed in the District Court of the United States for the District of Oregon, an Indictment in words and figures as follows, to wit:

[3]

[Title of District Court and Cause.]

INDICTMENT FOR VIOLATION

of Sections 338 and 88, Title 18, U. S. C. A.

United States of America,
District of Oregon—ss.

The Grand Jurors of the United States of America for the District of Oregon, duly impaneled, sworn and charged to inquire within and for said District, upon their oaths and affirmations do find, charge, allege and present:

That on the 27th day of October, 1937, the Grand Jury of the United States for the District of Oregon returned an indictment herein, No. C-15202,

which said indictment was, on February 2, 1938, by order of the above-entitled court resubmitted to said Grand Jury; that this indictment is returned in lieu of and replaces said original indictment and Count One hereof charges the identical offense charged in Count One of said original indictment, and Counts Seven and Eight replace Count Five of said original indictment and charge offenses identical with and included within said Count Five.

And the Grand Jurors aforesaid further find, charge, allege and present:

Count One:

That Joe Mazurosky, the defendant above-named, prior to September 12, 1934, the exact date being to the Grand Jurors unknown, acting jointly with Roy L. Martin, alias Dr. Miles, alias O. C. Stone; Herbert C. Crangle, alias Dr. Avery; John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and Thomas A. Andrews, alias Judge Thomas, together with other persons to the Grand Jurors unknown, did devise a certain artifice and scheme to defraud and, by means of false and fraudulent pretenses, representations and promises, to obtain money and property from a certain class of persons, including one Christine M. Mershon, then resident in divers communities within [4] the United States, who, by reason of age or infirmities and a lack of knowledge and experience concerning medical and surgical practice, could be induced to give credulity to the false representations hereinafter more particularly described; that said scheme and artifice and pre-

tenses, representations and promises then and there were to be and were in substance as follows, that is to say:

It was a part of said scheme and artifice that the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, and the said Herbert C. Crangle, alias Dr. Avery, should call at the respective homes of each of said intended victims, where the said Herbert C. Crangle should represent himself as a noted eye specialist and that his name was Dr. Avery, and that he should make an examination of the eyes of the said intended victim and should then represent to him that he had a growth in one of his eyes and that he would call into the home of the said intended victim a Dr. Miles, who accompanied him; that the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, should thereupon enter the home of the said intended victim and should represent himself to be Dr. Miles, a noted eye specialist, and should thereupon examine the eyes of the said intended victim and inform him that there was a growth on the nerve between one of his eyes and his brain, and that unless it was removed immediately he would lose his eyesight and his brain would be affected; that the said Herbert C. Crangle, alias Dr. Avery, and the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, would represent to the said intended victim that the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, was competent to perform said operation and that they would return in a few days and perform said operation;

that the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, together with the said Herbert C. Crangle, alias Dr. Avery, would later return to the home of the said intended victim and at said time should then pretend to perform an operation on one of the eyes of the said intended victim and should pretend to remove from the said eye a thin substance, which they should represent to the said intended victim to be a growth, and should obtain from the said intended victim as payment for said pretended operation large sums of money; [5]

That it was further a part of said scheme and artifice that thereafter the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, together with the said Thomas A. Andrews, alias Judge Thomas, would go to the home of the said intended victim, where the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, would represent himself to the said intended victim to be an eye specialist; that he would then represent to him that he had been sent there by Dr. Avery to make an examination of his eye to determine whether the operation previously performed had been successful; that the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, would then pretend to make an examination of the said eye and would inform the said intended victim that the growth had not been entirely removed and would return unless further treated; that there was only one treatment for such a condition, which was by means of a so-called radium belt; that said radium belts were so

valuable that it was necessary to make a deposit to guarantee the return of the belt, and that when it was returned the deposit would be refunded, minus \$1.00 a day rental for the time it had been used; that the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, would then represent to the said intended victim that he could secure such a radium belt for him from Judge Thomas; that the said Thomas A. Andrews, alias Judge Thomas, would thereupon enter the home of the said intended victim and would represent to him that his name was Judge Thomas; that he was attorney for Dr. Avery; that his daughter had one of said radium belts and that he would send it to him within a few days; that the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and Thomas A. Andrews, alias Judge Thomas, would thereupon represent to the said intended victim that he must pay them a large sum of money as a deposit for said belt, and that they should then and there obtain a check in such amount by then and there representing to him that said radium belt would be sent to him within a few days;

That the said pretenses, representations and promises, as the said defendant and the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone; Herbert C. Crangle, alias Dr. Avery; John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and Thomas A. Andrews, alias Judge [6] Thomas, and each of them, when so devising said scheme and artifice and when so executing and attempting to execute the same, well knew and intended, and at the time of

the committing by them of the offense in this count charged did well know and intend, were and would be false and fraudulent pretenses, representations and promises, in this: That the true name of the said Roy L. Martin was not Dr. Miles and he was not a noted eye specialist; that the true name of the said Herbert C. Crangle was not Dr. Avery and that he was not a noted eye specialist; that the said intended victim would not at any time have a growth upon one of his eyes; that the examination of his eyes by the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, and Herbert C. Crangle, alias Dr. Avery, would not disclose a growth upon one of said eyes and that they were not competent to remove any such growth; that the thin substance which the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, should pretend to remove from the eye of the said intended victim would not be and was not a growth and would not be removed from one of her eyes, but would be, and was in fact, a thin piece of material which the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone, would during said pretended operation secretly place upon said eye; that the true name of the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, was not Dr. Pierce nor Dr. H. J. Pierce; that the said intended victim would not be, at the time of the pretended examination by the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, suffering from any abnormal condition of the eye and would not require any treatment there-

for; that there was not and is not in existence any such apparatus known as a radium belt, designed for treatment of the human eye; that the true name of the said Thomas A. Andrews was not Judge Thomas; that he was not an attorney, and that his daughter did not have one of said radium belts; that the said check to be obtained from the said intended victim would not be used as a deposit for the safe return of any such radium belt, but would be cashed [7] by the defendant, Joe Mazurosky, and the proceeds thereof would be converted to the own use of the defendant and the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and Thomas A. Andrews, alias Judge Thomas.

It was further a part of said scheme and artifice of defendant and the said Roy L. Martin, alias Dr. Miles, alias O. C. Stone; Herbert C. Crangle, alias Dr. Avery; John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and Thomas A. Andrews, alias Judge Thomas, that they should, by means aforesaid and by the pretenses, representations and promises aforesaid, to be made to the said intended victims, to obtain from each of them money and valuable property as aforesaid, which money and property they would, according to said scheme and artifice, unlawfully convert to their own use and benefit, and to the use and benefit of each of them, and would thereby defraud the said intended victims and each thereof.

That thereafter, and on or about the 30th day of October, 1934, the exact date being to the Grand Jurors unknown, the said false and fraudulent pretenses, representations and promises having been made to the said Christine M. Mershon, and the defendant and the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and Thomas A. Andrews, alias Judge Thomas, having secured from the said Christine M. Mershon, by means of said false and fraudulent promises and representations, a check in the sum of \$450, and while said scheme and artifice was still in effect, the said defendant, Joe Mazurosky, for the purpose of executing said scheme and artifice to defraud and to obtain money and property from the said Christine M. Mershon, did, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously place and cause to be placed in the United States Post Office at Portland, Oregon, to be sent and delivered by the Post Office Establishment of the United States, according to the address and direction thereon, a [8] letter enclosed in a post-paid envelope, addressed to the Federal Reserve Bank at Seattle, Washington, from the Federal Reserve Bank at Portland, Oregon, a further description of said letter being to the Grand Jurors unknown, but said letter containing a check which was in words and figures as follows, to-wit:

"Oct 29 1934 No.

Arlington State Bank

Write Name of Your Bank (City and State) On
This Line

Arlington Wash

Pay to the Order of H. J. Pierce \$450.00
Four hundred Fifty & no/100 Dollars

For value received I claim that the above amount is on deposit in said bank in my name subject to this check and is hereby assigned to payee or holder hereof.

CHRISTINE M. MERSHON

Address

"

John Willy

Chicago Form 158

Stamps on Face

"92" (In Circle)

"N. P.

"Savings Teller No. 2

24-6"

Oct

(In Square)

30

1934

24-6"

(In Circle)

(Reverse Side)

"H. J. Pierce

O. C. Stone

Joe Mazurosky"

(Stamps)

"Pay to the Order of Any Bank, Banker or Trust Co. All Prior Endorsements Guaranteed. 24-6.

Oct 30 1934. The Bank of California, N. A., Portland, Oregon.”

“Pay to the order of any Bank or Banker or through the Portland Clearing House. All Prior Endorsements Guaranteed. Oct 30 1934. 24-1 Portland Branch 24-1. Federal Reserve Bank of San Francisco.”

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [9]

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

Count Two:

That Joe Mazurosky, the defendant above-named, prior to September 12, 1935, the exact date being to the Grand Jurors unknown, acting jointly with Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, together with other persons to the Grand Jurors unknown, did devise a certain artifice and scheme to defraud and, by means of false and fraudulent pretenses, representations and promises, to obtain money and property from a certain class of persons, including H. F. Belter, then residents in divers communities within the United States, who, by reason of age or infirmities and a lack of knowledge and experience concerning medical and surgical practice, could be induced to give credulity to the false representations hereinafter more particularly described; that said scheme and artifice and pretenses, representations

and promises then and there were to be and were in substance as follows, that is to say:

It was a part of said scheme and artifice of the said defendant and the said Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, that the said Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, would call at the respective homes of each of said intended victims, at which time one of said persons would represent himself to the said intended victims to be a representative of a spectacle company and would represent the other of said persons to be an eye specialist; that they would pretend to examine the eyes of the said intended victim and would represent to him that he had a cataract over one of his eyes; that they would represent to the said intended victim that the only remedy was a radium treatment, which cost about \$75.00 a drop, and that the said Dr. Pierce was competent to perform an operation to remove said cataract; that the said person representing himself to be Dr. [10] Pierce would then pretend to perform an operation upon one of the eyes of the said intended victim and would pretend to remove therefrom a small piece of material, which they would represent to be a cataract; that they would thereupon charge and obtain from the said intended victim large sums of money in payment for said operation, which were, according to the said scheme and artifice of defendant and the said Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, to be unlawfully converted by

them to their own use and the use of each of them;

That the said pretenses, representations and promises, as the said defendant and the said Frank Fairecloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, and each of them, when so devising said scheme and artifice and when so executing and attempting to execute the same, well knew and intended, and at the time of the committing by them of the offense in this count charged, did well know and intend, were and would be false and fraudulent pretenses, representations and promises, in this: That neither the said Frank Faircloth, alias Dr. Pierce, nor the said William H. Londergan, Jr., alias J. C. Adams, was a representative of a spectacle company, nor was either of said persons an eye specialist; that said intended victim would not have a cataract over one of his eyes; that the said Dr. Pierce was not competent to perform an operation to remove such cataract; that the said person representing himself to be Dr. Pierce would not remove a cataract from the eye of the said intended victim, and that the small piece of material which the said person representing himself to be Dr. Pierce would pretend to remove from said eye of said intended victim would not be and was not a cataract and would not be removed from one of his eyes, but would be, and was in fact, a thin piece of material which the said person representing himself to be Dr. Pierce would during said pretended operation secretly place upon said eye. [11]

It was further a part of said scheme and artifice of defendant and the said Frank Fairecloth, alias

Dr. Pierce, and William H. Londergan, Jr., that they should, by means aforesaid, and by the pretenses, representations and promises aforesaid, to be made to the said intended victims, obtain from them money and valuable property as aforesaid, which money and property they would, according to said scheme and artifice, unlawfully convert to their own use and benefit, and to the use and benefit of each of them, and would thereby defraud the said intended victims.

That thereafter, and on or about the 20th day of September, 1935, the exact date being to the Grand Jurors unknown, the said false and fraudulent pretenses, representations and promises having been made to the said H. F. Belter, and the defendant and the said Frank Fairecloth, alias Dr. Pierce, and William H. Londergan, Jr., having secured from the said H. F. Belter, by means of said false and fraudulent promises and representations, a check in the sum of \$500, and while said scheme and artifice was still in effect, the said defendant, Joe Mazurosky, for the purpose of executing said scheme and artifice to defraud and to obtain money and property from the said H. F. Belter, did, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously place and cause to be placed in the United States Post Office at Portland, Oregon, to be sent and delivered by the Post Office Establishment of the United States according to the address and direction thereon, a letter enclosed in a postpaid envelope, addressed to the Federal Reserve

Bank at Spokane, Washington, from the Federal Reserve Bank at Portland, Oregon, a further description of said letter being to the Grand Jurors unknown, but which said letter contained a check which was in words and figures as follows, to-wit:

[12]

(Picture) "The First National Bank 98-147

Kennewick, Wash. Sept 20 1935

Pay to the

Order of J. C. Adams \$500.00

Five Hundred and.....no/100 Dollars

No. 345 H. F. BELTER

Safe

Deposit Boxes

For

Rent

(In Diamond)

(Stamps) "N. P.

"92" (In Circle) 24-6" (In Square)

(Reverse Side)

"J. C. Adams

Joe Mazurosky"

(Stamps)

"Pay to the Order of Any Bank, Banker or Trust Co. Prior Indorsements Guaranteed. 24-6 Sep 20 1935 24-6. The Bank of California, N. A., Portland, Oregon".

“* * any Bank or Banker or * * the Portland Clearing House. All Prior Endorsements Guaranteed. Sep 20 1935. 24-1 Portland Branch 24-1 Federal Reserve Bank of San Francisco”.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [13]

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

Count Three:

That Joe Mazurosky, the defendant above-named, prior to September 12, 1935, the exact date being to the Grand Jurors unknown, acting jointly with Frank Faireloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, together with other persons to the Grand Jurors unknown, did devise a certain artifice and scheme to defraud and, by means of false and fraudulent pretenses, representations and promises, to obtain money and property from a certain class of persons, including one H. F. Belter, then resident in divers communities within the United States, who, by reason of age or infirmities and a lack of knowledge and experience concerning medical and surgical practice, could be induced to give credulity to the false representations herein described; that said scheme and artifice and pretenses, representations and promises were identical with those described in Count Two of this indictment and the allegations of Count Two descriptive of said scheme and artifice and pretenses, rep-

representations and promises, and the falsity thereof, are hereby referred to and by reference incorporated herein as if here repeated;

That thereafter, and on or about the day of September, 1935, the exact date being to the Grand Jurors unknown, the said false and fraudulent pretenses, representations and promises having been made to the said H. F. Belter, and the defendant and the said Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., having secured from the said H. F. Belter, by means of said false and fraudulent promises and representations the said check in the sum of \$500 mentioned in said Count Two of this indictment, and while said scheme and artifice was still in effect, the said defendant, Joe Mazurosky, for the purpose of executing said scheme and artifice to defraud and to obtain money and property from the said H. F. Belter, [14] did, at Portland, in the State and District of Oregon, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously place and cause to be placed in the United States Post Office at Portland, Oregon, to be sent and delivered by the Post Office Establishment of the United States according to the address and direction thereon, a letter enclosed in a postpaid envelope, addressed to the First National Bank at Kennewick, Washington, from the Bank of California, N. A., of Portland, Oregon, a further description of said letter being to the Grand Jurors unknown, but which said letter contained a check which was in words and figures as follows, to-wit:

“(Picture)” “The First National Bank 98-147
 Kennewick, Wash. Sept 20 1935

Pay to the Order of J C Adams \$500 00

Five Hundred and——no/100 Dollars

H F BELTER”

No. 345 (In Diamond)

Safe Deposit

Boxes for Rent

(Stamps) “92” (In Circle)

“Please Report By This (In Square)

No. 68646

The Bank of California

National Association

Portland, Ore.”

“N P (In Square)

24-6”

(Reverse Side)

“Pay to the Order of any Bank Banker or Trust
 Co

Prior indorsements guaranteed

24-6 Sep 20 1935 24-6

The Bank of California, N. A.

Portland, Oregon”

“* * * any Bank or Banker or

* * * the Portland Clearing House

All prior endorsements guaranteed

Sep 20 1935

24-1 Portland Branch 24-1

Federal Reserve Bank of San Francisco”

“Pay to the Order of any Bank or Banker or
through the Spokane Clearing House

All prior endorsements guaranteed

Sep 21 1935

28-1 Spokane Branch 28-1

Federal Reserve Bank of San Francisco”

“Cancelled

Spokane Branch

Sep 24, 1935

Federal Reserve Bank”

“Cancelled

Spokane Branch

Sep 24, 1935

Federal Reserve Bank” [15]

“Cancelled

Federal Reserve Bank

Sep 25, 1935

Portland Branch”

“Pay any Bank or Banker

All previous endorsements guaranteed

24-6 Sep 27 1935 24-6

The Bank of California, N. A.

Portland, Oregon”

Contrary to the form of the statute in such case
made and provided and against the peace and dig-
nity of the United States of America. [16]

And the Grand Jurors aforesaid, upon their
oaths and affirmations aforesaid, do further find,
charge, allege and present:

Court Four:

That Joe Mazurosky, the defendant above-named, prior to September 12, 1935, the exact date being to the Grand Jurors unknown, acting jointly with Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, together with other persons to the Grand Jurors unknown, did devise a certain artifice and scheme to defraud and, by means of false and fraudulent pretenses, representations and promises, to obtain money and property from a certain class of persons, including one H. F. Belter, then resident in divers communities within the United States, who, by reason of age or infirmities and a lack of knowledge and experience concerning medical and surgical practice, could be induced to give credulity to the false representations herein described; that said scheme and artifice and pretenses, representations and promises were identical with those described in Count Two of this indictment and the allegations of Count Two descriptive of said scheme and artifice and pretenses, representations and promises, and the falsity thereof, are hereby referred to and by reference incorporated herein as if here repeated;

That thereafter, and on or about the 28th day of September, 1935, the exact date being to the Grand Jurors unknown, the said false and fraudulent pretenses, representations and promises having been made to the said H. F. Belter, and the defendant and the said Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., having secured from the said H. F. Belter, by means of said false and fraudulent promises and representations the

said check in the sum of \$500 mentioned in said Count Two of this indictment, and while said scheme and artifice was still in effect, the said defendant, Joe Mazurosky, for the purpose of executing said scheme and artifice to defraud and to obtain money and property from the said H. F. Belter, [17] did unlawfully, knowingly, wilfully and feloniously place and cause to be placed in the United States Post Office at Kennewick, Washington, and sent and delivered to the addressee thereof by the Post Office Establishment of the United States, according to the address and direction thereon, a letter enclosed in a postpaid envelope, addressed to the Bank of California, N. A., at Portland, in the State and District of Oregon, from The First National Bank, Kennewick, Washington, a further description of said letter being to the Grand Jurors unknown, but which said letter contained a bank draft which was in words and figures as follows, to-wit:

“(Picture)” The First National Bank 98-147 12
Kennewick, Wash., Sep 28 1935 193
No. 40246

Pay to the Order of The Bank of California,
N. A., Portland, Oregon \$499.50

First Nat'l

Kennewick \$499 and 50 cts

To The First National Bank

24-4 Portland, Oregon

Insured against fraudulent alteration

Todd Bankers Supply

JAY D BLISS

Cashier”

(Reverse Side)

(Stamps)

“Received Payment Thru Clearing House

24-6

Sep 30 1935

Portland

Oregon

The Bank of California, N. A.”

“Received Payment Thru Clearing House

24-6

Sep 30 1935

Portland

Oregon

The Bank of California, N. A.”

“Collection

Sep 30 1935

Department” [18]

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [19]

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

Count Five:

That Joe Mazurosky, the defendant above-named, prior to September 12, 1935, the exact date being to the Grand Jurors unknown, acting jointly with Frank Faireloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, together with other persons to the Grand Jurors unknown, did

devise a certain artifice and scheme to defraud and, by means of false and fraudulent pretenses, representations and promises, to obtain money and property from a certain class of persons, including one E. C. Deibert, then resident in divers communities within the United States, who, by reason of age or infirmities and a lack of knowledge and experience concerning medical and surgical practice, could be induced to give credulity to the false representations herein described; that said scheme and artifice and pretenses, representations and promises were identical with those described in Count Two of this indictment and the allegations of Count Two descriptive of said scheme and artifice and pretenses, representataions and promises, and the falsity thereof, are hereby referred to and by reference incorporated herein as if here repeated;

That thereafter, and on or about the 7th day of December, 1935, the exact date being to the Grand Jurors unknown, the said false and fraudulent pretenses, representations and promises having been made to the said E. C. Deibert, and the defendant and the said Frank Fairecloth, alias Dr. Pierce, and William H. Londergan, Jr., having secured from the said E. C. Deibert, by means of said false and fraudulent promises and representations a check in the sum of \$300.00, and while said scheme and artifice was still in effect, the said defendant, Joe Mazurosky, for the purpose of executing said scheme and artifice to defraud and to obtain money and property from the said E. C. Deibert, did, at Port-

land, [20] in the State and District of Oregon, and within the jurisdiction of this Court, unlawfully, knowingly, wilfully and feloniously place and cause to be placed in the United States Post Office at Portland, Oregon, to be sent and delivered by the Post Office Establishment of the United States according to the address and direction thereon, a letter enclosed in a postpaid envelope, addressed to the Federal Reserve Bank at Spokane, Washington, from the Federal Reserve Bank at Portland, Oregon, a further description of said letter being to the Grand Jurors unknown, but which said letter contained a check which was in words and figures as follows, to-wit:

“Picture of Eagle
 District No. 12
 Member Federal
 Reserve System

Farmers & Merchants Bank 98-186

Rockford, Wash. Dec. 6 1935 No.

Pay to Order of F. C. Adams \$300.00

Three Hundred and no/100 Dollars

E. C. DEIBERT

N.P.

24-8

(Reverse Side)

(Stamps)

“Pay to the Order of any Bank or Banker or
through the Portland Clearing House

All prior endorsements guaranteed

Dec. 7, 1935

24-1 Portland Branch 24-1

Federal Reserve Bank of San Francisco”

“Pay to the Order of any Bank or Banker or
through the Portland Clearing House

All prior endorsements guaranteed

Dec. 9, 1935

28-1 Spokane Branch 28-1

Federal Reserve Bank of San Francisco”

Contrary to the form of the statute in such case
made and provided and against the peace and dig-
nity of the United States of America. [21]

And the Grand Jurors aforesaid, upon their oaths
and affirmations aforesaid, do further find, charge,
allege and present:

Count Six:

That Joe Mazurosky, the defendant above-named,
prior to September 12, 1935, the exact date being to
the Grand Jurors unknown, acting jointly with
Frank Fairecloth, alias Dr. Pierce, and William H.
Londergan, Jr., alias J. C. Adams, together with
other persons to the Grand Jurors unknown, did

devise a certain artifice and scheme to defraud and, by means of false and fraudulent pretenses, representations and promises, to obtain money and property from a certain class of persons, including one E. C. Deibert, then resident in divers communities within the United States, who, by reason of age or infirmities and a lack of knowledge and experience concerning medical and surgical practice, could be induced to give credulity to the false representations herein described; that said scheme and artifice and pretenses, representations and promises were identical with those described in Count Two of this indictment and the allegations of Count Two descriptive of said scheme and artifice and pretenses, representations and promises, and the falsity thereof, are hereby referred to and by reference incorporated herein as if here repeated;

That thereafter, and on or about the 7th day of December, 1935, the exact date being to the Grand Jurors unknown, the said false and fraudulent pretenses, representations and promises having been made to the said E. C. Deibert, and the defendant and the said Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., having secured from the said E. C. Deibert, by means of said false and fraudulent promises and representations a check in the sum of \$300.00, and while said scheme and artifice was still in effect, the said defendant, Joe Mazurosky, for the purpose of executing said scheme and artifice to defraud and to obtain money and property from the said E. C. Deibert, did

unlawfully, [22] knowingly, wilfully and feloniously place and cause to be placed in the United States Post Office at Rockford, Washington, and sent and delivered to the addressee thereof by the Post Office Establishment of the United States, according to the address and direction thereon, a letter enclosed in a postpaid envelope, addressed to the First National Bank of Portland, Oregon, at Portland, in the State and District of Oregon, from the Farmers & Merchants Bank, Rockford, Washington, a further description of said letter being to the Grand Jurors unknown, but which said letter contained a check which was in words and figures as follows, to-wit:

“(Picture of Eagle)”

District No. 12 Member Federal Reserve System
“Farmers & Merchants Bank 98-186
Rockford, Wash. Dec. 6 1935 No.

Pay to the Order of F. C. Adams \$300.00

Three Hundred and no/100 Dollars

E. C. DEIBERT”

N. P.

24-8

(Across Face) “Payment Stopped 12/10/35”

(Reverse Side)

(Stamps)

“Pay to the Order of any Bank or Banker or through the Portland Clearing House

All prior endorsements guaranteed

Dec. 7 1935

24-1 Portland Branch 24-1

Federal Reserve Bank of San Francisco''

“Pay to the Order of any Bank or Banker or
through the Portland Clearing House

All prior endorsements guaranteed

Dec. 9, 1935

28-1 Spokane Branch 28-1

Federal Reserve Bank of San Francisco''

Contrary to the form of the statute in such case
made and provided and against the peace and dig-
nity of the United States of America. [23]

And the Grand Jurors aforesaid, upon their oaths
and affirmations aforesaid, do further find, charge,
allege and present:

Count Seven:

That prior to the 12th day of September, 1934,
and continuously thereafter to and including the
27th day of October, 1937, the exact dates being to
the Grand Jurors unknown, in the State and Dis-
trict of Oregon, and within the jurisdiction of this
Court, and at divers other places to the Grand
Jurors unknown, the defendant, Joe Mazurosky,
did then and there wilfully, unlawfully, knowingly
and feloniously conspire, combine, confederate and
agree with Roy L. Martin, alias Dr. Miles, alias
O. C. Stone; Herbert C. Crangle, alias Dr. Avery;
John M. Gray, alias Dr. Pierce, alias H. J. Pierce;

Thomas A. Andrews, alias Judge Thomas, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States of America, to-wit: to use the United States Mails to defraud in violation of Section 338, Title 18, U. S. C. A., and among the said violations to commit the divers offenses charged against said defendant in Count One of this indictment, the allegations of which count descriptive of the fraudulent scheme and artifice and the pretenses, representations and promises, and the uses of the United States Mails in furtherance of said scheme and artifice after it had been devised, are hereby referred to and by reference incorporated in this count as if here repeated, and each and all of said acts of the defendant and of said co-conspirators, so described in said count of this indictment are now here designated as overt acts of the said defendant and said co-conspirators, done in pursuance of and to effect the objects of said conspiracy;

That, in addition thereto, for the purpose of executing said unlawful conspiracy, and to effect the objects thereof, and also to effect the objects of said conspiracy between the defendant and said co-conspirators to commit other like offenses, while said unlawful com- [24] bination and conspiracy was in existence, defendant and certain of said co-conspirators, at the several times and places in that behalf hereinafter mentioned, did and caused to be done the following described separate overt acts, to-wit:

(1) On or about September 12, 1934, the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and the said Thomas A. Andrews, alias Judge Thomas, drove to the home of Clara E. Allen, at Longmont, Colorado, where the said John M. Gray represented himself to be Dr. Miles, a cancer specialist;

(2) On or about September 12, 1934, the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and the said Thomas A. Andrews, alias Judge Thomas, obtained from the said Clara E. Allen a cashier's check in the sum of \$500, on the Mercantile Bank and Trust Company, Boulder, Colorado;

(3) On or about September 27, 1934, the defendant, Joe Mazurosky, presented said check to the United States National Bank at Portland, Oregon, for collection;

(4) On or about the 29th day of October, 1934, the said John M. Gray, alias Dr. Pierce, alias H. J. Pierce, and the said Thomas A. Andrews, alias Judge Thomas, called at the home of Christine M. Mershon at McMurray, Washington;

(5) On or about the 30th day of October, 1934, the defendant, Joe Mazurosky, tendered to the Bank of California, N. A., at Portland, Oregon, for deposit, a certain check in the amount of \$450, signed by Christine M. Mershon, directed to the Arlington State Bank, of Arlington, Washington;

That at all times during the existence of said conspiracy it was the intention of defendant and said co-conspirators that the United States Mails should and would be used to effect the objects of said con-

spiracy; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [25]

And the Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege and present:

Count Eight:

That prior to the 12th day of September, 1934, and continuously thereafter to and including the 27th day of October, 1937, the exact date being to the Grand Jurors unknown, in the State and District of Oregon, and within the jurisdiction of this court, and at divers other places to the Grand Jurors unknown, the defendant, Joe Mazurosky, did then and there wilfully, unlawfully, knowingly and feloniously conspire, combine, confederate and agree with Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, and with divers other persons to the Grand Jurors unknown, to commit certain offenses against the United States of America, to-wit: to use the United States Mails to defraud in violation of Section 338, Title 18, U. S. C. A., and among the said violations to commit the divers offenses charged against said defendant in Counts Two, Three, Four, Five and Six of this indictment, the allegations of which counts descriptive of the fraudulent scheme and artifice, and the pretenses, representations and promises and the uses of the United States Mails in furtherance of said scheme and artifice after it had been devised, are hereby referred to and by reference incorporated in this count as if here repeated, and each

and all of said acts of the defendant and of said co-conspirators, so described in said counts of this indictment are now here designated as overt acts of the said defendant and said co-conspirators, done in pursuance of and to effect the objects of said conspiracy;

That, in addition thereto, for the purpose of executing said unlawful conspiracy, and to effect the objects thereof, and also to effect the objects of said conspiracy between the defendant and said co-conspirators to commit other like offenses, while said unlawful combination and conspiracy was in existence, defendant and certain of said co-conspirators, at the several times and places in that behalf hereinafter mentioned, did and caused to be done the following described separate overt acts, to-wit: [26]

(1) On or about the 12th day of September, 1935, Frank Faircloth, alias Dr. Pierce, and William H. Londergan, Jr., alias J. C. Adams, went to the home of H. F. Belter, near Kennewick, Washington, and pretended to perform an operation on the eye of H. F. Belter;

(2) On or about the 20th day of September, 1935, defendant, Joe Mazurosky, went to the Bank of California, N. A., at Portland, Oregon, and tendered for deposit and deposited a certain check drawn upon the First National Bank of Kennewick, Washington, dated September 20, 1935, signed by H. F. Belter;

(3) On or about September 27, 1935, defendant, Joe Mazurosky, went to the Bank of California,

N. A., at Portland, Oregon, and directed said bank to hold a check of H. F. Belter on the First National Bank of Kennewick, Washington, for a few days and re-present the same to the First National Bank of Kennewick, Washington, for payment;

(4) On or about the 6th day of December, 1935, defendant, Joe Mazurosky, went to the First National Bank of Portland, Oregon, and tendered for payment a certain check drawn upon the Farmers and Merchants Bank, Rockford, Washington, dated December 6, 1935, in the sum of \$300, signed by E. C. Deibert;

That at all times during the existence of said conspiracy it was the intention of defendant and said co-conspirators that the United States Mails should and would be used to effect the objects of said conspiracy; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

A true bill.

Dated at Portland, Oregon, this 8th day of February, 1938.

KENNETH S. REED

Foreman, United States Grand Jury

CARL C. DONAUGH

United States Attorney

J. MASON DILLARD

Assistant United States Attorney

[Endorsed]: A true bill.

KENNETH S. REED

Foreman.

[Endorsed]: Filed Feb. 8, 1938. [27]

And afterwards, to-wit, on Friday, the 25th day of February, 1938, the same being the 96th Judicial day of the Regular November 1937 Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

[28]

[Title of Cause.]

February 25, 1938.

Indictment: Sections 388 and 88, Title 18, United States Code.

Now at this day comes the plaintiff by Mr. J. Mason Dillard, Assistant United States Attorney, and the defendant above named in his own proper person and by Mr. Edward Butler, of counsel. Whereupon the said defendant is duly arraigned upon the indictment herein, and for plea thereto, says that he is not guilty. [29]

And afterwards, to-wit, on Friday, the 18th day of March, 1938, the same being the 2nd Judicial day of the Special Medford 1938 Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to-wit: [30]

[Title of Cause.]

March 18, 1938.

Indictment: Sections 338 and 88, Title 18, United States Code.

Now at this day comes the plaintiff by Mr. J. Mason Dillard and Mr. Manley B. Strayer, Assistant United States Attorneys, and the defendant above named in his own proper person and by Mr. Hugh L. Biggs and Mr. Pat J. Gallagher, of counsel. Whereupon the jurors impaneled herein being present, the further trial of this cause is resumed. The said jury having heard the evidence adduced, at the close of all the evidence, plaintiff and defendant each having rested its case, the defendant moves the court to instruct the jury to return a verdict of not guilty and the court having heard the arguments of counsel, and the hour of adjournment having arrived, the further trial of this cause is continued to tomorrow, Saturday, March 19, 1938, at nine o'clock A. M. [31]

And afterwards, to wit, on Saturday, the 19th day of March, 1938, the same being the 3rd Judicial day of the Special Medford 1938 Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [32]

[Title of Cause.]

March 19, 1938.

Indictment: Sections 338 and 88, Title 18, United States Code.

Now at this day comes the plaintiff by Mr. J. Mason Dillard and Mr. Manley B. Strayer, As-

sistant United States Attorneys, and the defendant above named in his own proper person and by Mr. Hugh L. Biggs and Mr. Pat J. Gallagher, of counsel. Whereupon the jurors impanelled herein being present, the further trial of this cause is resumed. Whereupon the court having fully considered the motion of the defendant for a directed verdict of not guilty, and being fully advised in the premises,

It is ordered that said motion be and the same is hereby denied as to Counts Four, Seven and Eight of the indictment, and

It is ordered that said motion be and it is hereby allowed as to Counts One, Two, Three, Five and Six of the indictment, and that the jury return a verdict of not guilty as to each of said Counts of the indictment.

The said jury having heard the arguments of counsel and the instructions of the court, retires in charge of proper sworn officers to consider of its verdict. Whereupon this cause having been finally submitted to the jury,

It is ordered that Earl T. Newbry, heretofore sworn as an alternate juror, be discharged from further service herein.

Thereafter, plaintiff being present by Mr. J. Mason Dillard and Mr. Manley B. Strayer, Assistant United States Attorneys, and the defendant in his proper person and by Mr. Hugh L. Biggs and Mr. Pat J. Gallagher, of counsel, said jury comes into court and returns its verdicts in words and figures as follows, to wit:

“We, the Jury duly impaneled and sworn to try the above-entitled cause, by direction of the Court do find the defendant, Joe Mazurosky, Not Guilty as charged in Count One of the Indictment herein; [33] Not Guilty as charged in Count Two of the Indictment herein; Not Guilty as charged in Count Three of the Indictment herein; Not Guilty as charged in Count Five of the Indictment herein; and Not Guilty as charged in Count Six of the Indictment herein.

Dated at Medford, Oregon, this 19th day of March, 1938.

ELBERT L. LENOX

Foreman”

“We, the Jury duly impaneled and sworn to try the above-entitled cause, do find the defendant, Joe Mazurosky, Guilty as charged in Count Four of the Indictment herein; Guilty as charged in Count Seven of the Indictment herein; and Guilty as charged in Count Eight of the Indictment herein.

Dated at Medford, Oregon, this 19th day of March, 1938.

ELBERT L. LENOX

Foreman”

and it is ordered that said verdicts be received and filed and that the jury be discharged from further consideration of this cause. Whereupon upon motion of plaintiff,

It is ordered that it be and is hereby allowed to withdraw all exhibits introduced upon the trial of this cause and substitute photostatic copies therefor. [34]

And afterwards, to wit, on the 19th day of March, 1938, there was duly filed in said Court, a Verdict in words and figures as follows, to wit: [35]

[Title of District Court and Cause.]

VERDICT

We, the Jury duly impaneled and sworn to try the above-entitled cause, do find the defendant, Joe Mazurosky,

Guilty as charged in Count Four of the Indictment herein;

Guilty as charged in Count Seven of the Indictment herein; and

Guilty as charged in Count Eight of the Indictment herein.

Dated at Medford, Oregon, this 19th day of March, 1938.

ELBERT L. LENOX

Foreman

[Endorsed]: Filed March 19, 1938. [36]

And afterwards, to wit, on Saturday, the 19th day of March, 1938, the same being the 3rd Judicial day of the Special Medford 1938 Term of said Court; present the Honorable, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [37]

In the District Court of the United States
for the District of Oregon

Indictment

Sections 338 and 88, Title 18, U. S. C. A.

No. C-15297 March 19, 1938.

THE UNITED STATES OF AMERICA,

vs.

JOE MAZUROSKY,

Defendant.

JUDGMENT

Now at this day comes the plaintiff by Mr. J. Mason Dillard and Mr. M. B. Strayer, Assistant United States Attorneys, and the defendant above named in his own proper person and by Mr. Hugh L. Biggs and Mr. Pat Gallagher, of counsel; and the defendant having heretofore been convicted by the verdict of a jury in this court and cause of the crime of unlawfully using the United States Mails in furtherance of a scheme to defraud, as charged in Count Four of the indictment herein, and unlawfully conspiring to use the United States Mails

in furtherance of a scheme to defraud, as charged in Count Seven of the indictment herein, and unlawfully conspiring to use the United States Mails in furtherance of a scheme to defraud, as charged in Count Eight of the indictment herein, as appears of record herein; and said defendant waiving time and consenting that sentence may be imposed at this time,

It is adjudged that the said defendant do pay a fine of One Thousand Dollars and be imprisoned for a term of Five Years and from and after the expiration of said term until said fine be paid for the offense charged in Count Four of the indictment, and that said defendant do pay a fine of Five Thousand Dollars and be imprisoned for a term of Two Years and from and after the expiration of said term until said fine be paid for the offense charged in Count Seven of the indictment, and that said defendant do pay a fine of Five Thousand Dollars and be imprisoned for a term of Two Years and from and after the expiration of said term until said fine be paid for the offense charged in Count Eight of the indictment herein; that the terms of imprisonment imposed for the offenses charged in Counts Seven and Eight of the indictment run concurrently and begin to run upon the termination of the sentence imposed for the offense charged in Count Four of the indictment herein. A total sentence of Eleven Thousand Dollars fine and seven years; that said sentence of imprisonment be executed in a United States Penitentiary

to be designated by the Attorney General of the United States or his authorized representative, and that said defendant stand committed until this sentence be performed or until he be otherwise discharged according to law.

JAMES ALGER FEE

Judge

[Endorsed]: Filed March 19, 1938. [38]

And afterwards, to wit, on Tuesday, the 19th day of April, 1938, the same being the 37th Judicial day of the Regular March 1938 Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [39]

[Title of District Court and Cause.]

ORDER ALLOWING TIME FOR FILING BILL
OF EXCEPTIONS AND ASSIGNMENTS
OF ERROR

At this time this matter coming on to be heard on the motion of Defendant and Appellant herein, appearing by and through his attorney, Edwin D. Hicks, for an order extending the time in which to file bill of exceptions and assignments of error in the within appeal until and including the first day of May, 1938, and it appearing from said motion that good cause has been shown for the allowance of such extension of time in which to file bill of exceptions and assignments of error

herein and the Court being fully informed in the premises:

It is ordered that the Defendant and Appellant have and he is hereby granted until and including the first day of May, 1938, in which to file bill of exceptions and assignments of error in respect of the appeal which has heretofore been taken in this cause.

Dated this 19th day of April, 1938.

JAMES ALGER FEE

Judge of the District Court

[Endorsed]: Filed April 19, 1938. [40]

And afterwards, to wit, on the 28th day of April, 1938, there was duly filed in said Court, a Stipulation for Transcript of Record in words and figures as follows, to wit: [41]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between the parties to the within cause, through their attorneys of record, that the transcript to be prepared by the Clerk of the Court and transmitted to the United States Circuit Court of Appeals for the Ninth Circuit shall consist of the following:

- (1) Indictment;
- (2) Record of Arraignment and Plea;

- (3) Record of Trial Containing Motion for Directed Verdict;
- (4) Record of Verdict;
- (5) Verdict of Guilty;
- (6) Sentence and Judgment;
- (7) Notice of Appeal;
- (8) Order Extending Time in which to file Bill of Exceptions and Assignment of Errors;
- (9) Bill of Exceptions;
- (10) Assignment of Errors;
- (11) Stipulation as to Record.

Praeipce for Record to be prepared by the Clerk under Rule Nine of the Rules of the Supreme Court of the United States governing Appeals in criminal cases.

M. B. STRAYER

Assistant United States Attorney
for the District of Oregon

EDWIN D. HICKS

Attorney for Defendant and Appellant

[Endorsed]: Filed April 28, 1938. [42]

And afterwards, to wit, on the 28th day of April, 1938, there was duly filed in said Court, a Praeipce for transcript of the record on appeal, in words and figures as follows, to wit: [43]

[Title of District Court and Cause.]

PRAECIPE

To: Hon. G. H. Marsh, the Clerk of the United States Court:

You are hereby directed to please prepare and certify the record in the above entitled cause for transmission to the United States Circuit Court of Appeals for the Ninth Circuit, including therein a certified copy of all papers filed and proceedings had in the above entitled cause which are pertinent to the Appeal, and especially including therein the following documents:

- (1) Indictment;
- (2) Record of Arraignment and Plea;
- (3) Record of Trial containing Motion for Directed Verdict;
- (4) Record of Verdict;
- (5) Verdict of Guilty;
- (6) Sentence and Judgment;
- (7) Notice of Appeal;
- (8) Order Extending Time in which to file Bill of Exceptions and Assignments of Error;
- (9) Bill of Exceptions;
- (10) Assignments of Error;
- (11) Stipulation as to Record;
- (12) This Praecipe,

omitting titles, verifications, and acceptance of service on all said documents except the Indictment and the Notice of Appeal. [44]

Dated at Portland, Oregon, this 28th day of April, 1938.

EDWIN D. HICKS

Attorney for Defendant and Appellant

[Endorsed]: Filed April 28, 1938. [45]

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 45, inclusive, contain a transcript of the matters of record in said court pertinent to the appeal from a judgment and sentence in a certain criminal cause then pending in said court numbered C-15297, in which the United States of America is plaintiff and appellee, and Joe Mazurosky is defendant and appellant, as designated by the stipulation and praecipe for transcript filed in said cause by said appellant; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause as designated by the said stipulation and praecipe, as the same appears of record at my office and in my custody.

I further certify that the cost of the foregoing transcript is \$15.90, and that the same has been paid by said appellant.

I further certify that there is transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, with the foregoing transcript, the original bill of exceptions and the original assignment of errors filed in said cause by said appellant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 29th day of April, 1938.

[Seal]

G. H. MARSH,

Clerk. [46]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be it remembered, that the above entitled cause came on regularly for trial Thursday, March 17, 1938, at 9:00 o'clock A. M., in the above entitled court, at Medford, Oregon, before the Honorable James Alger Fee, Judge, presiding, and a jury of twelve men, duly and regularly empanelled and sworn, the United States of America appearing by its attorneys, Messrs. J. Mason Dillard and Manley Strayer, Assistant United States Attorneys, and defendant appearing by his attorneys, Messrs. Hugh L. Biggs and P. J. Gallagher.

Whereupon the following proceedings were had:

C. B. WELTER

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

(Testimony of C. B. Welter.)

Direct Examination

By Mr. Dillard:

My name is C. B. Welter. I am a postoffice inspector of the United States Government and have served in such capacity for thirty-one years. I am acquainted with and have had conversation with the defendant, and am familiar with his signature.

(At this point Government's exhibits, numbered 1, 3, 4, 5, and 7 were marked for identification and were identified as each bearing the endorsement "Joe Mazurosky" (defendant) on the back thereof.)

FRANK NELSON

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows: [49]

Direct Examination

By Mr. Dillard:

My name is Frank Nelson and I reside at this time at the House of Correction, Milwaukee, Wisconsin. I have examined government's exhibit "4" for identification, being a check drawn by "H. F. Belter" and state that I first saw this check in the fall of 1935. At that time my partner, Mr. Londergan, and I called at Mr. Belter's home in the vicinity of Rockford, Washington. Mr. Londergan had information about him.

(Testimony of Frank Nelson.)

I have known the defendant Joe Mazurosky about nineteen or twenty years, I should judge. I met him either during or shortly after the world war. I was in the army but the defendant was not in the army at that time. I met the defendant through a mutual friend, Dr. Brown, who had an optical store next to his place of business. I saw the defendant quite frequently after that time, either at his place of business, in Portland, Oregon, or at the optical store. We used to visit back and forth. We played cards some. We have been good friends since that time as far as I was concerned.

Q. Did it continue up until 1935, would you say?

A. Yes, sir.

I have examined Government's exhibit No. 7 for identification, which you have handed me, and state that I first saw the exhibit in either 1925 or 1926; I don't remember the exact date or year. Henry Wagner was the maker of the check. I had just known Mr. Wagner a few hours when that check was made out.

Referring back to the other check, exhibit 4 for identification, I will state that I received Four Hundred (\$400.00) Dollars as the proceeds of that check. I received the money from Mr. Mazurosky a month or six weeks after the date of the check. I was in Spokane, Washington, at the time and received the check [50] through the mail. The letter enclosing the check was addressed "Frank W.

(Testimony of Frank Nelson.)

Nelson'' to my Spokane address. My endorsement does not appear on the back of the check. It does bear the endorsement of my partner, Mr. Londergan, who was then going under the name of J. C. Adams.

Q. How did you happen to receive the proceeds of that check from Joe Mazurosky?

A. Well, I sent him this check.

Q. How did you send it to him?

A. By mail.

I sent the check to the defendant's address in Portland, Oregon. It was a Five Hundred (\$500.00) Dollar check and I received back Four Hundred (\$400.00) Dollars. I owed Mr. Mazurosky Twenty (\$20.00) Dollars and I gave him Fifty (\$50.00) Dollars for cashing the check and told him to keep Thirty (\$30.00) Dollars for interest on what I owe him.

Mr. Dillard: Q. I will ask you, Mr. Nelson, if you ever had a conversation with Joe Mazurosky, the defendant, relative to the cashing of checks that might be sent to him by you.

A. Well, I really couldn't say that I did have any understanding.

Q. Did you ever talk with Joe Mazurosky, the defendant, about a commission for cashing this check or other checks of a similar character?

Mr. Biggs: That is leading and suggestive, if the Court please.

The Court: Overruled.

(Testimony of Frank Nelson.)

Mr. Biggs: An exception that must be taken after each ruling.

A. Well, there was only one time to my knowledge; the defendant told me that ten (10%) per cent wasn't enough, he would have to have more money than that. [51]

Mr. Dillard: Q. About when was that?

A. That was in '35.

Q. At that time did he say any more than that, that ten (10%) per cent wasn't enough?

Mr. Biggs: That is leading and suggestive, if the Court please. I see no reason why this witness can't state the conversation without having the words put in his mouth.

The Court: Overruled.

A. He just said that the checks were getting a little hot and he would have to have more commission.

Mr. Dillard: Q. Now I will refer you to the other check you have in your hand, Exhibit 7 for identification, bearing the signature of the maker, Wagner. I will ask you if you ever had a conversation with Joe Mazurosky about that check.

A. Well, there was a Thousand (\$1,000.00) Dollars given to Mazurosky. The check came back; the signature wasn't satisfactory—I left that part of the country at the time and didn't return for three or four years, and upon my return to Portland I casually asked Joe if it really cost a thousand dollars to square that check and he said, "Well, you still owe me money."

(Testimony of Frank Nelson.)

Q. What did Joe Mazurosky say, if anything?

A. He merely said, "You still owe me money."

I was present when the check was signed by Mr. Wagner. It was delivered to me.

Q. How did Mr. Wagner happen to give you a check for Five Hundred (\$500.00) Dollars?

A. I called on Mr. Wagner at his home——

Mr. Biggs: Just a moment, the defendant objects to the introduction of any testimony concerning the manner or means or time or place of the taking of that check. It is not shown to be set up in the indictment. It is not the basis for one of the charges made in the indictment; it is dated, as already identified, some [52] thirteen years prior to the indictment and some nine years prior to the date the alleged conspiracy commenced, and therefore is too remote to be admitted under the theory of any similar transactions, if that is what is claimed for it.

Mr. Dillard: It is offered, your Honor, to show knowledge on the part of the defendant. It will develop that—well, it is offered to show knowledge.

The Court: Let me see those two checks. You are now asking about Exhibit No. 7?

Mr. Dillard: Yes, your Honor.

The Court: I think that sufficient basis is not laid so that evidence can be introduced as to check No. 4.

Mr. Dillard: I will refer you back then, Mr. Nelson, to Exhibit 4, the Belter check. Was that check ever in your possession?

(Testimony of Frank Nelson.)

A. It was.

Q. And will you tell how it happened to come into your possession?

Mr. Biggs: If the Court please, for the purpose of the record I enter my objection to that, the original objection that was made to that testimony. I understand the Court hasn't ruled on it.

The Court: Yes, the Court has ruled that a sufficient basis has been laid so that the transaction by which this check was obtained is admissible.

Mr. Biggs: And an exception.

The Court: An exception is allowed.

My partner, Mr. Londergan, and I called on Mr. Belter at his home and I was introduced to Mr. Belter by Mr. Londergan as an eye, ear, nose and throat specialist from Buffalo, N. Y., and I [53] told him that he had a very serious condition of the eye and he should go in and call on an oculist and have his eye treated, and he asked me if I could do the work for him there at home and I consented to do the work for him in his home and received in exchange Three Hundred (\$300.00) Dollars in cash and a check for Five Hundred (\$500.00) Dollars, this check. Mr. Belter's home was located in the country out of Kennewick, Washington, two or three miles out. Mr. Belter was a man around seventy years old. I was only at his home possibly an hour altogether.

(Testimony of Frank Nelson.)

I was not at that time an eye doctor; I am an optometrist by profession. I was not an eye specialist. At the time I went by the alias name of Dr. Pierce. My partner was representing himself as Dr. Adams.

I explained to Mr. Belter that he had a very serious eye trouble and I used a piece of fish skin that I put in his eye, and used Murine; I told him it was radium, and I think his wife or his sister was there at the time, and I took this piece of skin out of his eye and told him it was a cancerous cataract.

Mr. Dillard: Q. What information did you have at the time that you received that check from Mr. Belter as to how or when it would be paid by the bank on which it was drawn?

A. We went to the bank and he only had Three Hundred (\$300.00) Dollars in cash in the bank and he was unable to get the money that day, the balance of Five Hundred (\$500.00) Dollars more, so he made arrangements with the bank to get the money the next day and he gave us a check and told us to present it to the bank possibly a week or ten days later and the money would be paid.

Q. I will ask you if you conveyed that information to Joe Mazurosky?

A. I don't remember exactly. [54]

Mr. Dillard: Now I am going to refer you back again to Exhibit 7, being a check signed by Mr. Wagner.

(Testimony of Frank Nelson.)

Mr. Biggs: If the Court please, would it be proper at this time for the defense to ask the Government to advise the defense on what date the alleged conspiracy set up in the indictment commenced? I think it may have some bearing on the admissibility of this testimony. The indictment is indefinite on that point.

Mr. Strayer: All we can say on that is, we have alleged all we could in the indictment. We have alleged it originated prior to 1934. How far back it extended we don't know. We think there is evidence that it extended clear back into 1925, but that is all the information we can furnish counsel.

Mr. Biggs: If they are not ready to claim the conspiracy did start at that time that would be an additional ground of objection to Government's Exhibit 7, Your Honor.

The Court: The Court will admit the testimony in view of the matters that have been already testified regarding Government's Exhibit 7.

Mr. Biggs: May we have an exception to the Court's ruling?

The Court: Yes.

It was in 1931 that I had the conversation with Mazurosky regarding the Thousand (\$1,000.00) Dollars.

I came into possession of the Wagner check, Exhibit 7, under the following circumstances. I called on Mr. Wagner at his home, introduced myself as a local optometrist from Vancouver, Washington, and examined his eyes and told him that he had a

(Testimony of Frank Nelson.)

trouble that I really didn't understand myself, that he should consult an eye, ear, nose and throat specialist, and I asked him if he knew anybody in Vancouver or Portland that he was personally [55] acquainted with that he cared to go see, and he said that he didn't, so I told him about a party that was with me that was an eye specialist and that if he would go out and ask him to come in that he might give what information he needed, so he did that. I told him my partner (Dr. Brown) was Dr. Ainsworth. He called Brown into the house and Brown performed an operation for him on his eye. At that time we were using the skin of an egg. He put that on the eye and removed it from the eye, and showed it to him and charged him Six Hundred Seventy-five (\$675.00) Dollars, I think it was. We got two checks, one for One Hundred Seventy-Five (\$175.00) Dollars and one for Five Hundred (\$500.00) Dollars. The one for \$175.00 Dr. Brown cashed at one of the banks in Vancouver, Washington. I took the other Wagner check to another bank and he refused to cash it, but the banker certified the check. I am referring now to Exhibit 7 for identification. When he refused to cash the check I gave it to my partner, Dr. Brown, and from that day until last year I never saw the check any more. Dr. Brown was a friend of Mr. Mazurosky as well as myself. He was the gentleman who had the store next door to Mazurosky's store, the optical store.

Mr. Dillard: Q. Did you ever discuss this plan or means that you have described here of obtaining

(Testimony of Frank Nelson.)

these checks from the Belters and the Wagners with Joe Mazurosky, or discuss it in his presence?

A. I don't really think we ever did discuss it.

I do not remember of having any conversation with him in that regard. I did not recover the proceeds of the Five Hundred (\$500.00) Dollar Wagner check.

Mr. Dillard: Q. I will ask you if either you or this man Brown that you refer to ever discussed this system of obtaining money from people which you have described you used in the Wagner [56] instance. Did you ever discuss it in the presence of the defendant?

A. No, sir, I don't think that I ever discussed it with Mazurosky or with Brown before any of us together.

Referring to Government's Exhibit 5 for identification, the photograph of the Deibert check, I will state that I first saw that check some time in 1935 at Rockford, Washington, and I also saw it in Spokane, Washington. I received it from my partner, Mr. Londergan, in the presence of Mr. Deibert. I sent it through the mail to Mazurosky for collection. I know of my own knowledge the circumstances under which Mr. Londergan received the Deibert check.

Mr. Dillard: Q. Will you tell about it then?

Mr. Biggs: If the Court please, to keep the record straight, we object to the testimony—any testimony as to the statements of this witness or his partner identified here as Londergan in the absence and out

(Testimony of Frank Nelson.)

of the presence of the defendant, Joe Mazurosky.

The Court: The objection is overruled.

Mr. Biggs: An exception.

A. My partner, Londergan, under the name of J. D. Adams, and I called on Mr. Deibert at his home and I was introduced as Dr. Pierce and I performed the usual operation on the eye and charged Mr. Deibert Three Hundred (\$300.00) Dollars. We went to the bank to get the money and he couldn't get the money so he gave us a post-dated check for Three Hundred (\$300.00) Dollars. I didn't see the check written out. It was given to my partner and brought over to the car and Londergan gave me the check to send in for collection, which I did. I sent it from Spokane to Joe Mazurosky in Portland and never heard any more about it.

Mr. Dillard: Q. Now Mr. Nelson, you have told about sending the Belter check to Joe Mazurosky and the Deibert check to Joe [57] Mazurosky. I will ask you to state in your own words, why you sent those checks to Joe Mazurosky instead of taking them to some local bank to cash them and get the proceeds?

A. Well, I knew that the checks were to be handled through him.

Mr. Biggs: I object to that as a conclusion of the witness. It has no bearing on any of the issues of this case, what he knew, unless they lay some foundation for it.

The Court: I think it may remain.

(Testimony of Frank Nelson.)

Mr. Biggs: And an exception.

During the period from 1931 until 1935 I communicated with Joe Mazurosky in my true name. I sent the Deibert check to him in my true name of Frank Nelson.

Mr. Dillard: Q. I will ask you if you ever had a conversation with Joe Mazurosky, we will say between the years of 1929 and 1935, concerning the means by which you made your livelihood, made your living.

A. About the only thing that was ever said in regard to the business was, he asked me, "How are the suckers, Slats? Are you making any big sales?" That was about the only conversation we had.

He asked me that several times between 1929 and 1935.

I testified before that I owed Joe Mazurosky Twenty (\$20.00) Dollars at the time I sent him the Belter check. I borrowed money from Mr. Mazurosky several different times. The amounts were usually small, ten or twenty dollars or something like that. I also bought merchandise from him, a watch and a few glasses—spectacles. The cost of all these items did not run over ten dollars. I think the watch cost five dollars. I don't remember the occasions when I borrowed money from Joe Mazurosky, the particular occasions. I borrowed so many different times from him, several dozen times, I guess, whenever I needed money. I [58] only borrowed the money from him in Portland. We took one trip together in 1931, the only trip I ever took

(Testimony of Frank Nelson.)

with him. We went some place in Washington; I don't remember where it was, I was pretty well under the influence of liquor and we stayed three or four days. I had a chauffeur at the time and we went in his car with other parties. Others who were in attendance went in their own car. It was a pleasure trip and I paid the expenses.

Cross-Examination

By Mr. Biggs:

Frank Nelson is my real name. I have used several different names, at different times and places. I am held in the House of Correction at Milwaukee under the name of Frank Faireloth. The House of Correction is something similar to a penal institution. I am under sentence for a period of four months on an indictment to which I pleaded guilty for attempted use of the mails to defraud. The fraud charge was resulted from the same kind of fraud with which we are here concerned.

Other occupations I have followed include the hotel and restaurant business. I followed this line in Spokane and Seattle, Washington. After leaving the army I entered the hotel business in Spokane, after leasing a hotel property. I operated this business for about four years, up until about 1925, and then I went into the eye business and have been in the eye racket since that time. From 1911 up to 1919, I sold magazines. By eye racket, I refer to the incidents I have just described. Since entering the eye business, I have likewise been in the hotel busi-

(Testimony of Frank Nelson.)

ness in Seattle, Washington, this for about a year along about 1929. In 1937, I was in the hotel business in San Francisco. Between 1929 and 1937 I was not in the hotel business, or other kind of business except the eye business. I occasionally do some gambling. I have never been interested in promoting oil ventures or anything of that kind, nor did I have an connection with the caravan business. [59] I studied optometry in Spokane for two years, 1923 and 1924, I think it was, and I maintained a business in Spokane the latter part of 1924. From there I quit the store and went into the eye racket business and have not had a store since. I am a registered optometrist but my certificate is delinquent; I think I let it run out.

Q. Isn't it a fact, Mr. Nelson, that during this time since 1925 you have been convicted of other types of offenses of the kind you have just described?

A. No sir.

Q. Obtaining money under false pretenses?

A. I was convicted on this racket one time at Rockford, Illinois, and that was in 1930.

I did not keep any record of the loans I made from the Defendant. A couple of different times I pledged security with him, a diamond stickpin, a watch, or something of that nature. I do not remember when these transactions occurred. Ordinarily I did not pledge any security nor give my note. Referring to the Belter check, Government's Exhibit

(Testimony of Frank Nelson.)

No. 4, I owed Mr. Mazurosky Twenty (\$20.00) Dollars at the time that check was given.

Q. Do you recall on the trial before you said that you owed him Twenty-five (\$25.00) Dollars?

A. I do not.

Q. But you kept no record?

A. No, sir.

On the trial of the case at Portland, this same case, I recall that I testified as follows: (impeaching question)

I have been convicted of a felony and this occurred in Wyoming, I can't think of the town. The conviction was for writing a check for Twenty (\$20.00) Dollars. I wrote the check and served time for it.

My livelihood since 1925 has been derived largely from deceiving people. Deception is an art that I have commercialized and I [60] have capitalized on this for the last nine or ten years. I have developed a technique in deception that ordinarily enables me to deceive without arousing suspicion.

I do not recall a time when Mr. Mazurosky loaned me Ninety (\$90.00) Dollars for payment of my hotel bill at the Heathman Hotel in Portland. I know that he never did pay a hotel bill for me at the Heathman Hotel.

Q. Or did you borrow money from him for that purpose?

A. Yes, sir.

Referring to the Belter Check, the Five Hundred (\$500.00) Dollar check from which I testified I re-

(Testimony of H. F. Belter.)

that there has been no sufficient foundation to show that this defendant had anything to do with it.

The Court: The objection is overruled.

Mr. Biggs: An exception.

Q. I wish you would go ahead and tell us how you happened to make out that check payable to that Mr. Adams?

Well, one of the two parties was represented to me as Dr. Miles. Adams examined my eyes and said, "You have got a cataract [62] on your eye; that is the trouble with your sickness." This occurred right in my home. They said they were doctors and that they could cure me. When Adams came in he had a glass that he put on my eyes and tested them. My right eye was all right and my left eye wasn't, so he says, "I have got a doctor in the car here; his name is Miles, and he can take that cataract off of your eye and you will be all right," so I thought it was better having it taken off as being sick all the time. So they went at it. They put a towel over my eye and they had a dropper and they put stuff in my eye, dripped it in there. He took something out of my eye, I don't know what. I saw it and it looked like white skin.

I paid them Three Hundred (\$300) Dollars cash and they took me to Kennewick in their car and I went to the bank and asked the president about the money. The banker told me I would have to wait eight or ten days for the money; this was on the 12th of September. After the twentieth they got their money because the check came back to the bank and

(Testimony of H. F. Belter.)

I got it out of the bank. They remained in their car while I went in the bank. I told them that the check would be good in a few days. I have seen both of these men since on a photograph. I have seen one of them personally, and I am referring to that big, slim, tall fellow, black hair, dark in his face. The man I have just described was not known to me as Adams, but as Dr. Miles. Adams told me his name was Miles.

(No Cross Examination)

MRS. H. F. BELTER

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

Questions by Mr. Dillard:

I am Mrs. H. F. Belter, the wife of the witness who has just testified. I have heretofore seen the Exhibit 4 for identification, the check, but did not see it at the time it was made out. He made it out at the bank. I was present when an operation was performed on my husband to remove a cataract or something from my husband's eye. There were two men there at the time the [63] operation was performed. I don't remember the names they used. Since that time, I have seen the one who is tall and black. The tall, dark man is here. I did not know these men by their names when they performed the operation.

(No Cross Examination)

HENRY WAGNER

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

Questions by Mr. Strayer:

My name is Henry Wagner and I live eight miles east of Vancouver, Washington, on a farm. I have a brother, William Wagner, who lives with me. I will be seventy-five next month, about two weeks from now. I have examined the check, Exhibit 7, which you have handed me and will state that it bears my signature. The check is made payable to O. A. Plummer and I made it out on November 14, 1925.

Q. Mr. Wagner, will you just tell the jury the circumstances under which you made out and delivered that check?

Mr. Biggs: If the Court please, we object to the introduction of this testimony on the ground that it was to do with a transaction in the absence and not in the presence of this defendant, there being no sufficient foundation made connecting the defendant with the transaction or showing knowledge of the transaction.

The Court: The objection is overruled.

Mr. Biggs: And may we have an exception?

The Court: Exception allowed.

Mr. Biggs: Could a continuing objection to this testimony go on, Your Honor, to prevent the necessity of constant interruption? [64]

The Court: You will have to object to the testimony of each witness.

(Testimony of Henry Wagner.)

Mr. Biggs: But it may be a continuing objection?

The Court: As far as the testimony of the particular witness.

Mr. Biggs: Thank you.

There were two men came to my farm on the 14th day of November, 1925, who said they were eye doctors that tried to sell us glasses. I wasn't in need of any glasses, but my brother, William, did need them; his eyes were failing and they examined his eyes and discovered that there was something wrong and finally found it was a cataract—told him it was a cataract, and said that it would have to be removed or else he would go blind, and so he submitted to the operation to remove that imperfection in his eye. Before they did that I asked them what it would cost to remove it and they said it would be nominal, the price would be nominal, and so they went to work and removed it and when they got through the bill was Seven Hundred Fifty (\$750.00) Dollars.

They had an instrument about a foot long, a sort of rod, and they worked around in his eye with that and removed something that looked like the white of an egg, and they called that the cataract. That was the operation that was performed. These parties were using the names of Dr. O. A. Plummer and Dr. J. C. Ainsworth. Mr. Plummer was a tall, slim man, rather dark, about 35 or 40 I should judge. I believe I saw him today. The other wasn't near as tall, was older, heavy set with a sloping forehead at a conspicuous angle. The older man performed the

(Testimony of Henry Wagner.)

operation. When they said they wanted \$750.00 I objected. They said radium was used to remove the cataract and that the value [65] of the radium used in the operation was Six Hundred Fifty (\$650.00) Dollars. They reduced the bill to Six Hundred Fifty (\$650.00) Dollars and I wrote out two checks, this one and another for One Hundred Seventy-five (\$175.00) Dollars, making a total of Six Hundred Seventy-five (\$675.00) Dollars. The checks were handed over to Dr. Plummer. I did not see them after I delivered the checks. One of the checks was cashed, the \$175.00 one. I next saw the \$500.00 check at Mr. Dubois' in the Bank. After these men departed with the checks, I went over to Portland, Oregon, to question one Joe Mazurosky who presented the check for payment at Vancouver to find out the whereabouts of those two eye doctors, and Mr. Mazurosky told me them fellows were loggers and he had sold them a watch and merchandise to a certain amount and gave them the balance in money. That is the way he come to get this check. I don't think he had the check when I talked with him. I asked him where those fellows were that he had sold the watches to and he said he thought they were around Portland. He told me he knew one of them for a number of years. I don't remember which one of them it was he said he had known for a number of years. I talked with Mr. Mazurosky because I wanted to get on the trail of those eye doctors. Since he had the check, I thought he might know where they were. He said he didn't know

(Testimony of Henry Wagner.)

where they were but thought they might be around Portland. I don't know that he offered to aid me in finding them. I then went to the Deputy Sheriff at Vancouver and we went together to see John Goltz in Portland. About two weeks after that I talked with Mr. Mazurosky at his place of business and he told me it was too bad I had been swindled, and that he had been swindled too the same way. I don't know all that was said in the conversation. I believe we did discuss the matter in a general way for some time. I don't remember any details about his statement of being swindled. I [66] made no agreement with Mr. Mazurosky about what was to be done with the check, whether it was to be paid or not. The check has not been paid. About November 26th, 1925, about two or three weeks after the eye doctors were there, I went to Spokane to locate the eye doctors. I did not succeed in locating them. While in Spokane, on November 27, 1925, there was a person boarded the train just as it pulled out for Portland that looked very much like Joe Mazurosky. The operation on my brother's eye accomplished nothing.

Cross Examination

Questions by Mr. Biggs:

I am not sure that it was Mr. Mazurosky that I saw in Spokane. I just got a side glance of the party as he boarded the train. I did not make any investigation to determine if it were he. I would rather believe that it was not Mr. Mazurosky; that

(Testimony of Henry Wagner.)

I was mistaken. Mr. Mazurosky told me the men were loggers after I had come back from Spokane.

Q. When this case was on trial before Judge Fee in Portland in the Federal Court do you remember your testifying in response to this question: "Well, what did he tell you? Answer: He told me they were locals, that he had sold them merchandise to the extent of over one hundred dollars and paid them the balance in money."

A. Yes.

WILLIAM WAGNER

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

Questions by Mr. Strayer:

My name is William Wagner, brother of Henry Wagner, and we live near Vancouver, Washington. I recognize the check you have handed me, Exhibit 7 for identification.

Q. Do you recall the circumstances under which that check was made out and delivered? [67]

A. Yes, sir.

Q. Will you just tell the jury about it?

Mr. Biggs: If the Court please, for the purpose of the record we object to the introduction of this testimony on the grounds assigned with respect to the testimony of the brother.

The Court: The objection is overruled.

(Testimony of William Wagner.)

Mr. Biggs: And that will go to all the testimony on the further ground of remoteness?

The Court: Overruled. Exception allowed.

Mr. Strayer: Q. Tell us the circumstances under which your brother made out and delivered that check.

Well, this check was written for eye doctors. There were a couple of them, Plummer and Ainsworth, and they examined our eyes and told me I had a cataract on one of my eyes and if it wasn't removed I would go blind in a short time. It scared me, of course, and it scared my brother, and we issued this check in payment for the operation. The check was made out by my brother in my presence. The check was delivered to Plummer. The check was never paid. I have seen neither of the men since then. The operation didn't help "one bit."

(No Cross Examination)

JOHN GOLTZ

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

Questions by Mr. Dillard:

My name is John Goltz and I am a city detective of Portland, Oregon. I have been connected with the Police Department for 34 years. I was serving as a detective during the years, 1925 and 1926. I know the defendant in this case and had occasion to talk

(Testimony of John Goltz.)

with him in the year 1925. On the morning of November 23, 1926, Deputy Sheriff Andrews of Vancouver and Mr. Henry Wagner came to [68] our office. The deputy sheriff informed me that he had a warrant for two men who represented themselves as doctors; one, O. A. Plummer and the other, J. C. Ainsworth, and that Mr. Mazurosky would know them so we drove to his place and interviewed him. He said, "Yes, I know them fellows", and we questioned him about a check. We asked him if he knew about a Five Hundred (\$500.00) Dollar check and he said, "Yes, they bought One hundred six (\$106.00) Dollars worth of jewelry from me and gave me the check and I gave them the balance in cash." Mr. Mazurosky gave us a description of the men. He described O. A. Plummer as a man about fifty years of age, rather heavy set, five foot eight tall, 180 or 190 pounds, thin gray hair, gray mustache, broad shouldered, forehead sloping back, wore a large diamond in his shirt. Mr. Mazurosky told us that O. A. Plummer goes to the logging camps, make the logging camps.

Cross Examination

By Mr. Biggs:

Mr. Mazurosky told us Plummer was a gambler and that he makes the logging camps. He gave us a description of Plummer and also of the other man known as Dr. Ainsworth. He described Plummer as a man about six feet one, 30 to 35 years old, slender built, and had hair, a pretty good set of hair, nose

(Testimony of John Goltz.)

rather long, hair rather thin. The description I have just given was gotten from Mr. Mazurosky and Wagner together. They were both together when the description was given me. I got both of the descriptions from Mr. Mazurosky. That was on the occasion of my first visit to him.

ERNEST C. DEIBERT

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

My name is E. C. Deibert and I live at Rockford, Washington. [69] The Exhibit 5 for identification which you have handed me bears my signature. After making out the check, I gave it to those eye doctors. I had Fifty (\$50.00) Dollars in the bank and they wanted me to pay them right away and they thought I had the money in the house and they were squeezing me; they wouldn't go out of the house until I paid them. They made me go with them in a car to draw the money and pay them.

Q. How much did you draw?

A. I had this fifty dollars cash in the bank, and when they examined my eyes—I was on the job and the short fellow, the eye doctor—the car barely stopped and he was out of the car and running for me, and right away he says, “How is your eyes?” “Oh”, I says, “they are fair.” Of course I had—

(Testimony of Ernest C. Deibert.)

Mr. Biggs: If the witness will excuse me, if the court please, I want to put the same objection in the record as to this witness that has been put in as to the others, in that the defendant was not personally present and there is no testimony sufficient to connect him with it.

The Court: Objection overruled and exception allowed.

Mr. Dillard: Go ahead, Mr. Deibert.

He looked at my eyes right away and he told me I had poor eyes, and so he kept on talking and he wouldn't give me even a chance to answer him, he talked so fast. He wanted me to go with him in the house. I didn't care to go with him in the house, but finally he made me; I had to go with him in the house and then I had to sit down in a chair and he examined my eyes, and about three weeks before I had glasses fitted to my eyes at Sears & Roebuck. He says he can cure my eyes. My wife asked him what he would charge. "Well", he said, "Examination is free", and then he says he has got Dr. Pierce in the auto and he can cure [70] them, and he called him in. He put his overcoat over my neck and my face, and then my wife says, "Let me see what you put in." "Oh, nobody can see that." Then he took something out of the eye. She wanted to see that but he wouldn't let her. "Well", he said, "I am going to charge you Three Hundred Fifty (\$350.00) Dollars." My wife says, "I thought it was free." "Well, curing you ain't free." He said it would cost a whole lot more if I had to go to Seattle or Tacoma.

(Testimony of Ernest C. Deibert.)

I thought everything was honest, so we agreed and he took me to Rockford and I drew the Fifty (\$50.00) Dollars and in addition I gave him a check for Three Hundred (\$300.00) Dollars. A few days later, Mr. Goldman, of the bank, called me up inquiring to know where to send the Three Hundred (\$300.00) Dollar check and my wife told him not to send it. The fellow that put the stuff in my eye gave his name as Dr. Pierce; said he had an institution in New York and one in Seattle or Tacoma. I saw the tall fellow at the Court House in Portland and that is the only time I have seen him since. I will be seventy-eight next May. I have always been a farmer. After executing the check I gave it to these eye doctors.

(No Cross Examination)

O. A. POWELL

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

My name is O. A. Powell. I am of the Portland Police Department and have been so identified for over 22 years. I have been a detective for over seventeen years. I was so employed during the year 1935. I have examined the Government Exhibit 5 for identification which you have handed me and state that I have seen a photograph of a check

(Testimony of O. A. Powell.)

which looked very similar to this one with the name of Deibert on it and in the amount of [71] Three Hundred (\$300.00) Dollars. It was drawn on the same bank.

I know Joe Mazurosky and had a conversation with him about a check similar as to maker, amount, and date to the one you have just shown me. I think it was about the 20th of December, 1935. I was following up a letter that our office had received from the Sheriff at Spokane, Washington, I believe, and I went to Mr. Mazurosky's place of business and asked him about the check and about who this man Adams was to get him identified. Mr. Mazurosky said that he had known Adams in a way for about sixteen years but really didn't know his right name, but he was known as Slats, that he had been around Dr. Brown in that neighborhood years before and he knew him as Slats.

Q. Did he say to you what this man Slats' occupation was?

A. He said he was an eye specialist, is the way he described him.

We did not locate the man "Slats" at the time. Mr. Mazurosky was unable to tell us where he was or where he could be found. The check had been deposited at that time at the Bank of California and we were at the Bank and talked with the cashier before going down to talk with Mr. Mazurosky.

Q. Did Joe Mazurosky make any statement to you as to how the check hapened to come into his possession?

(Testimony of O. A. Powell.)

A. Well, I can't say on this particular check. I could say a statement generally made. He said those men often run a little account, maybe borrow a little money of him at times, but I wouldn't say on this particular check. I don't recall discussing with Mr. Mazurosky whether he received the check personally or through the mail.

(No Cross Examination)

W. E. WILLIAMS

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, [72] was examined and testified as follows:

By Mr. Dillard:

My name is Williams and I am a detective of the Portland Police force. I have been in the department about 22 years, and have been a detective for 16 years. I was serving as a detective in the year 1935. I had occasion to interview the defendant in company with Detective Powell. I have examined Government's Exhibit 5 for identification which you have handed me and state that I have seen a photograph of a check similar as to amount, date and name of drawer. We talked with Mr. Mazurosky about a check like the exhibit. Detective Manciet had a check and we were assigned to the case and we went and talked to the banker about the check, and from there we went down and talked to Mr. Mazurosky as to the description of the man who

(Testimony of W. E. Williams.)

gave it to him and everything like that. He said he didn't know the man's name; he had known him for about sixteen years. He was referring to the man whose name appeared on the check as "Adams". he said he came to the store and asked him to cash the check and he refused to do it; he said he would put it through the bank for him, and he didn't know whether it was any good until we told him it came back. He said they called the party "Slats" and he worked with Dr. Brown about sixteen years ago in the eye specialist bunk as far as he knew.

(Cross Examination)

By Mr. Biggs:

I made some notes of the conversation. I think I probably have them with me.

GLENN HARMS

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard: [73]

My name is Harms and I am Police Identification Officer and Photographer of the Portland Police Department. I was so employed in 1935. I have examined Government's Exhibit 5 for identification which you have handed me and state that it is the back and front of a check that I photographed on or about December 12th, 1935. The check was

(Testimony of Glenn Harms.)

brought to me by Detective Manciet of the check detail. I produced and have the original film of the check. (Produces original film.) The two films just handed you represent the front and back of the check.

(The two photographic films were thereupon marked Government's Exhibit 26 for Identification.)

The film and photograph turned out to be a correct representation of the original check. After photographing the check, I returned it to Mr. Manciet.

L. D. MANCIET

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

I am a detective of the Portland Police Department and was so engaged in 1935. I have examined Government's Exhibit 5 for identification, which you have handed me, and state that I had such a check as the photograph depicts in my possession. That was about December 10th and 11th, 1935. I obtained the check from the Bank of California, Portland, of which this is a facsimile. The original bore the same endorsements on the back at that time as it now bears. Thereafter, I took the check to Police headquarters and had it photographed by Fingerprint Expert Harms. I then returned the check to the Bank of California.

(No Cross Examination)

Mr. Dillard: If Your Honor please, we will offer in evidence Government's Exhibits for identification 4, 5, 7, and 26.

The Court: Any objection? [74]

Mr. Biggs: If the Court please, the defendant objects to the introduction of these checks on the ground and for the reason that there has been no evidence sufficient to connect the defendant with the manner and method and means by which these checks were taken or for any other purpose, and I assume they would be immaterial if they were not offered for the purpose of connecting the defendant with that transaction; as to Exhibit 7, on the further ground and for the further reason that it is in connection with a transaction occurring more than thirteen years prior to the date of the offer, and upon that ground it is too remote to have probative force.

The Court: All these checks have the defendant's signature and they are admissible in evidence. Admitted. Exception allowed.

(The documents heretofore marked Government's Exhibits 4, 5, 7, and 26, respectively, for Identification were thereupon received in evidence.)

HENRY WAGNER

was thereupon recalled as a witness in behalf of the United States, and, having been heretofore duly sworn, was examined and testified further as follows:

By Mr. Strayer:

When I testified on yesterday, I mentioned a conversation I had with Joe Mazurosky about the check I signed (November 14, 1925) and which was delivered by me to the man that performed the operation. When I talked with Mr. Mazurosky I told him the method that was employed; I told him about the operation.

(Cross Examination)

By Mr. Biggs:

I don't remember whether I told about this on the preceding trial.

LLOYD DUBOIS

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows: [75]

By Mr. Strayer:

My name is Lloyd Dubois and I reside at Vancouver, Washington. I am president of the Washington National Bank and have been its president since 1912. In 1925 and 1926 the bank was known as the Washington Exchange. I recognize the check you have handed me, Exhibit 7, signed by Henry Wagner. I first saw the check just about closing

(Testimony of Lloyd Dubois.)

time one Saturday, November 14, 1925. It was presented by a gentleman I didn't know. I questioned him about it, and it being a large check I didn't want to take any chance on it, and some of the answers that he gave me were not satisfactory, so I certified the check and told him he could deposit it in his own bank when he got home. The man left with the check. My certification thereon said, "Good for \$500 when properly endorsed", signed by myself. It was probably a few days later the check came back to us, I think through the United States National which was our correspondent bank at that time. It was returned to us through the regular mail. It was sent through the regular collections. Upon receiving the check back, I stamped it "Payment stopped" and returned it. Payment had not been stopped until I stamped it so. I stopped payment on the check because on Monday morning when I came to the bank, I met Mr. Wagner and he told me the circumstances under which it was issued. It was brought over by Judge Stapleton and I told him I didn't think it was properly endorsed. That is what the certification demanded, and so he took it back with him. I told him they could bring the gentleman over if they had him over there and we thought we could properly identify him if it was properly endorsed, and so he took it back with him and later on he brought it back and gave it to us. Judge Stapleton brought it over just a few days after I had stopped payment on the check. Judge Stapleton was a practicing attorney in Portland at

(Testimony of Lloyd Dubois.)

that time. His purpose in coming to the bank was to demand payment on the check and he did so. The [76] check was never paid to Plummer or Mazurosky. It was finally paid to Mr. Wagner. After we got the check back we gave Mr. Wagner's account credit for it. Mr. Stapleton brought the check back and turned it over to us. I just rather gather from these endorsements that we must have had it twice before he brought it back. They evidently tried it again. I can't tell from the endorsements the dates that it came back to me through the mail. They are very badly blurred.

(Cross Examination)

By Mr. Biggs:

The Mr. Stapleton I referred to is now a Circuit Judge in Multnomah County, Oregon. I do not know, but I presume he was acting in behalf of Mr. Mazurosky at the time as his attorney. He asked me why I didn't pay the check. I had certified the check and then gave it back to this man Plummer. The effect of certifying a check by a bank is to give notice to whoever might take the check that the check is bonafide; that it is good.

JOHN M. GRAY

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Strayer:

My name is John Gray and my present place of residence is Texas Penitentiary. My age is thirty-six. I recognize the check you handed me, Exhibit No. 1 for identification. This check came into my possession about October 29, 1934. The check is made out in my handwriting and is signed by Mrs. Mershon, I believe. I received the check while at some little town above Arlington, Washington. There was with me at the time a Mr. T. A. Andrews who was working with me in the so-called eye racket. After receiving the check I brought it back to Seattle and I gave it to Roy Martin, an associate of mine in the eye racket. Martin had sent me to see the Mershons. Roy Martin went by the name of [77] Dr. Miles, and Pierce, and many other names, but he went this particular time under the name of R. E. Terrell.

After delivering the check to Martin, I didn't see what he did with it; only in conversation is all I know. My conversation with him is all I know about it. I didn't see what he did with the letter after he prepared it. I received the proceeds of the check from Mrs. Roy Martin in Portland, Oregon. By prearrangement with Roy Martin, I was to take Mrs. Martin down to Joe Mazurosky's place of business and she was to get this money and I was to take my share of it. Mrs. Crangle and Mrs. Martin,

(Testimony of John M. Gray.)

T. A. Andrews, and myself and my wife all arrived in Portland the same day, and Mrs. Martin and myself got in a taxicab and drove to the business establishment of Mr. Mazurosky and I sat there in the cab and she went in and came back out and she had some money. I saw her go in and talk to some one inside and they went back in the back and in a few minutes she came back out and said she had the money and we went back up to the President Hotel. The check is for Four Hundred Fifty (\$450.00) Dollars. When we got back to the hotel, I received the amount of this check less fifteen (15%) per cent and less twenty-five (25%) per cent.

Mr. Strayer: Q. Do you know what the fifteen per cent was deducted for?

Mr. Biggs: If the Court please, we——

The Court: You can cross examine.

The Witness: Shall I answer the question?

The Court: Yes.

A. Fifteen per cent——

Mr. Biggs: Just one minute. Will the witness answer whether he can say “yes” or “no”, and then I may want to object.

The Court: Answer “yes” or “no”.

The Witness: Ask the question again please.

Mr. Strayer: Q. Do you know what the fifteen per cent was [78] deducted for?

A. Yes, sir.

Q. What was it deducted for?

Mr. Biggs: If the Court please, I object to that unless the witness can say from his personal knowl-

(Testimony of John M. Gray.)

edge what that was. He may be relying on hearsay or something else.

The Court: Yes, I think the preliminary proof is sufficient, but I think you had better find out the sources of this answer.

Mr. Strayer: Q. Now you say that you and Mrs. Martin went down to Joe Mazurosky's place of business. Did you know Joe Mazurosky at that time?

A. No, sir.

Q. Did you see the man that Mrs. Martin talked with in Mazurosky's place?

A. Yes, sir.

Q. Do you know who that man was?

A. Well, I understood it was Joe Mazurosky.

Q. Well, do you know who it was now?

A. I think it was Joe Mazurosky.

Mr. Biggs: I move that that be stricken.

The Court: Overruled. Just a moment; when you say you think, you mean you believe that you now recognize as the defendant the man that she talked to, or what do you mean?

A. The fact of being his place of business and the man being about his height, I would be of the opinion that it was him. I wouldn't swear that it was; I couldn't positively identify him as the man that she went in and talked to; I only think so.

Mr. Biggs: I renew my objection, if the Court please.

The Court: Overruled.

Mr. Biggs: An exception.

The Court: Exception allowed. [79]

(Testimony of John M. Gray.)

The man that Mrs. Martin talked with in the Store was behind a counter.

By Mr. Strayer:

Now going back to Seattle, Mr. Gray, at the time you delivered this check to Mr. Martin why did you deliver it to Mr. Martin?

A. For him to get someone to cash the check.

Q. Do you know why Martin sent the check to Joe Mazurosky?

Mr. Gallagher: That calls for a conclusion, Your Honor.

Mr. Strayer: I guess I assumed a fact that is not in evidence.

Q. I will ask you now, do you know through conversation with Martin what was done with the check?

Mr. Biggs: If the Court would instruct the witness to answer these preliminary questions "yes" or "no" then my objections would not be premature.

The Court: You may answer if you had a conversation. Answer "yes" or "no".

A. I had a conversation with Martin, yes, sir.

Q. Do you know from that conversation what was done with the Mershon check?

Mr. Biggs: If the Court please, we object to that as calling for a conclusion.

The Court: Answer "yes" or "no".

A. Yes.

Q. What did Martin tell you as to what he had done with the Mershon check?

(Testimony of John M. Gray.)

Mr. Biggs: If the Court please, we object to the witness answering that question on the ground that it would be hearsay, there being no sufficient or any prima facie showing of any partnership in crime or otherwise between Mr. Martin and Mr. Mazurosky, and therefore no sufficient foundation laid for the introduction of any statements, declarations, or evidence of any acts of omission or commission done in the absence and out of the presence of the defendant. [80]

The Court: The objection is overruled.

Mr. Biggs: And may we have an exception?

The Court: Yes.

A. My conversation with Roy Martin was that he mailed the check to Joe Mazurosky.

Mr. Strayer: Q. And did he tell you anything about the arrangement with Joe Mazurosky?

Mr. Biggs: If the Court please, may we make the same objection and have the continuing objection to any testimony asked for and given by this witness in connection with statements or evidence of facts or declarations on the part of Martin?

The Court: Yes.

Mr. Biggs: I make the same objection at this time, Your Honor.

The Court: The objection is overruled.

Mr. Biggs: And may I have an exception?

The Court: An exception is allowed.

Mr. Strayer: Q. What did he tell you?

A. It would cost me fifteen per cent (15%) to get the check cashed through Joe Mazurosky.

(Testimony of John M. Gray.)

As I previously stated, my arrangement with Mrs. Martin was that she would go with me down to Joe Mazurosky's and we would obtain this money and I would take my part of the money and Mrs. Martin was to keep his part of the money.

Q. And under your agreement with Martin what percentage of the check were you to receive?

A. I received a total of sixty (60%) per cent.

Q. And what was to be done with the balance of the money?

A. Fifteen (15%) per cent would go to Joe Mazurosky for collection, twenty-five (25%) per cent to Martin and Cragle, and sixty (60%) to Nelson and myself.

We were paying Martin and Crangle twenty-five (25%) per cent for advance information concerning these people. [81]

Referring to the time when I received the Mershon check on October 29th, after having a conversation probably one or two days previous to that with Mr. Martin and Mr. Crangle they told me circumstances of a fake cataract operation on Mrs. Mershon, or Mr. Mershon, one or the other of them. I went to the home of these people on this date and made an examination of the party that was supposed to be operated on, I don't recall which one now. I remember explaining that I was there for the purpose of giving them back the money in the event that it wasn't cured, that the doctor that operated on them had had an accident of some kind and probably was killed; any-how, after my exami-

(Testimony of John M. Gray.)

nation I told them it wouldn't be cured without the use of a radium belt and explained to them a radium belt was very valuable, only twelve of them in the United States; the doctor that made them had died with the secret. The windup of the conversation was that they deposited this amount of money with me as surety, one of these belts to be delivered to their home and used for a period of thirty days, and that is how I obtained the check.

To my knowledge there was no such thing as a radium belt. There was nothing more the matter with these people than senility or old age. At the time I talked with them I was using the name, Dr. Pierce. I also went by the names of Miles, Hamilton, Howard, Clayton, Cox and others. I understood that the name T. A. Andrews was the correct name of the party who was with me. He also went by the name of Thomas, Judge Thomas, and I so introduced him to the Mershons. I represented Thomas as an attorney, settling the estate of the doctor who had been killed and who had performed the operation on their eyes. Thomas is at this time in a Federal penitentiary in Virginia. I understand Roy Martin and Herbert Crangle are in the Federal penitentiary at Atlanta, Georgia. [82] Crangle usually went by the name of Dr. Avery. Martin, when performing the operations, usually was represented as Dr. Miles.

Referring back to the time when I received the proceeds of the Mershon check, I will state that I met Mr. Mazurosky about a week thereafter, for the

(Testimony of John M. Gray.)

first time. I was introduced to him by Roy Martin at the St. Andrews Apartment Hotel in Portland, Oregon.

Q. And what were you doing there at the St. Andrews Apartment Hotel?

A. Mr. Martin was living there at the hotel. I was down there to see him and I just met Mr. Mazurosky, that is all.

The Allen check, Exhibit 3 for identification, which you have handed me was received by me sometime in September, 1934. I went to the home of Clara Allen and her brother somewhere around Boulder, Colorado. The Exhibit is a cashier's check.

Mr. Strayer: Q. And how did you receive possession of it?

Mr. Biggs: If the Court please, do I understand that my objection goes to all this testimony, there being no showing that the defendant was present there at the time and it being statements and acts of persons outside of the presence of the defendant?

T. A. Andrews and I drove to the home of Clara Allen and her brother, out of Boulder, Colorado, and I talked to Miss Allen and her brother and performed a so-called fake cataract operation on the brother's eye and went to town to get this money. She drove her car and we followed in another car. She didn't have the money in the bank. They had some Liberty bonds and these were at the bank in the name of the brother and she couldn't obtain these bonds, so she had to go back home and get an order for them, and it was then too late to get the

(Testimony of John M. Gray.)

bonds out of the [83] bank that day so I instructed her to go the following day and get the bonds or the cash money and I would be back in a few days to get it, but I didn't. I waited a couple of weeks and I sent Mr. Andrews out there early on Sunday morning. That day he returned with the check and gave it to me. I received the check from T. A. Andrews about twelve or fifteen days after the date noted on the check. I was working with Andrews at that time.

I performed the operation on Miss Andrews' brother. Due to senility, his vision was dim and I explained to him that I could make him see with radium treatment. I dropped a few drops of Murine eye water into his eye and removed a piece of skin that I had—I was supposed to have removed it—and that was all there was to it. He did have a cataract but I did nothing about it. The check was given me in payment for the operation. I was using either the name of Miles or Pierce, I am not sure which. Andrews was using the name of Thomas. Miss Allen's brother received no benefit from the operation. After receiving the check, I gave it to Roy Martin. He told me he could send it to Portland for collection and it would cost me fifteen (15%) per cent. He told me he was going to send it to Joe Mazurosky. He wrote him a letter and put it in an envelope and dropped it in a mail box in Denver, Colorado. After he mailed the letter, I later received the proceeds of the check. Mr. Martin gave me Five Hundred (\$500.00) Dollars less fifteen

(Testimony of John M. Gray.)
(15%) per cent, which is Seventy-five (\$75.00) Dollars, in Seattle—a few dollars less than that because he told me that the money had been wired to him. That was about the first or second week in October, 1934. I went back to see Miss Allen in 1935. When I was there the first time they had two thousand dollars in Liberty bonds and I went back there to get the balance of them if I could. I talked to Miss Allen; found her in the cow pen milking a cow. It was [84] early in the morning. I went in and talked to her and she didn't recognize me. As soon as I began to talk about eyes she told me she had been swindled out of Five Hundred (\$500.00) Dollars and if I would go down town and talk to the district attorney he would tell me all about it, and so that was all I wanted to know and I drove away. She did not recognize me as one of the men who had been there before. I wore no disguise.

(The check, Government's Exhibit 15, for Identification, was thereupon marked.)

The first time I ever saw the Exhibit marked Government's Exhibit 15 for identification was at the trial in Portland. I can't say that I recognize the handwriting. When Martin sent the checks to Joe Mazurosky, he used the name of R. E. Terrell.

Cross Examination

By Mr. Biggs:

Q. Did you see that, Mr. Gray?

A. Yes, sir.

I first met Martin in 1931 or 1930. It is my understanding that he is now in the Federal penitentiary

(Testimony of John M. Gray.)

at Atlanta. Terrell was an improvident type of fellow. I don't know whether he ever borrowed money from Joe Mazurosky. I did not meet Mr. Mazurosky until a week or ten days after one of those transactions and that was at the St. Andrews Hotel. It was just a passing introduction and there was no conversation. There were other people there. Referring to the \$425.00 or the \$500.00 check, it is my statement that \$75.00 was deducted from that check so far as I was concerned; a few dollars over that to take care of the cost of wiring the money from Portland to Seattle. I don't remember how much I received, but it wasn't \$425.00. I recall that I testified at the trial in Portland that I received \$425.00 on that check. I recall that at the previous trial there was some talk of wiring charges. I don't know that any one has talked with me since the [85] other case. I was first approached regarding the case in the summer of 1936. That was by C. W. Bulong, Post Office Inspector, Dallas, Texas; also by Mr. Mann, Post Office Inspector of Washington, D. C.. I have talked with no one else. I talked with Mr. C. B. Welter, Post Office inspector for the Oregon District in 1937. That conversation was held at the Texas penitentiary. Mr. Welter did not take a statement from me. The other men took statements. I have been indicted on the eye racket scheme and I pleaded guilty in Norfolk, Virginia. Sentence was suspended on that charge for five years. I understand that I will be called into court for sentence on that charge in five years.

(Testimony of John M. Gray.)

The plea I referred to was entered in 1937, after I had talked with Mr. Welter. I am under indictment in Wisconsin. I am now serving time in Texas, fifteen years for assault and attempt to murder. I am also serving ten years for a swindle in the nature of one of these cases. I am likewise serving ten years on another case of grand theft, one of these same cases, but the conviction was grand theft. That was at Livingston, Texas; also ten years for swindle at Kaufman, Texas, and eight years at Lufkin, Texas. That is forty-three years all told that I am serving. Ten years of these sentences run concurrently. I actually have to serve thirty-three years. I believe I went into this game in 1930. Prior to that time, I was a licensed optometrist in Fort Worth, Texas, from 1923 to 1930. I practiced optometry legitimately. I had engaged in no criminal activity prior to 1930. I had not been tried or convicted of anything prior to 1936. Between 1930 and 1936 I did not devote all of my time to this game or racket. I owned a restaurant in Hollywood, California, and operated it. I built the restaurant in 1935 and sold it since I have been in the penitentiary. Between 1930 and 1935 practically all of my time was devoted to the eye racket. That was my only means of livelihood. It was my intention in [86] the eye racket to deceive, and mislead poor old people. I wouldn't call it robbery because it did not involve force. When I called upon Mrs. Mershon and Miss Allen, I represented myself as something that I was not. When I told them I could cure them,

(Testimony of John M. Gray.)

I knew that I was unable to. I knew that the treatment I prescribed was false and inadequate. When I took their money, I took it knowing that I had deceived them. I knew that I had not given them value received.

I have acquired a technique effective in deceiving people and where it has been to my advantage, I have deceived and misled people. I don't know whether it is difficult for the ordinary observer to determine when I am and am not telling the truth. I attempted to cultivate the bedside manner, and a fluency and art of apparent sincerity. I was fairly successful in these matters.

By Mr. Biggs:

Q. How many persons do you think you have deceived or misled in connection with this scheme?

A. Probably a thousand.

Redirect Examination

By Mr. Strayer:

No one has made me any promises in consideration of my testimony in this case. No one has told me or led me to believe that I will receive any special consideration for testifying. There is no consideration that could be given me and I have nothing to gain.

MRS. CHRISTINE MERSHON

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

My name is Christine Mershon and I live at McMurray, Washington. I signed the check which you have shown me marked Government's Exhibit No. 1 for identification, on October 29, 1934. [87]

Q. Just tell us briefly, Mrs. Mershon, how you happened to make out and sign that check.

Mr. Biggs: If the Court please, may we make the same objection that has hitherto been made with respect to statements, declarations, actions and so forth made outside the presence of the defendant, on the ground that there is no sufficient showing that the defendant had any knowledge of this transaction.

Court: Objection overruled.

Mr. Biggs: And an exception, if the Court please.

The Court: Exception allowed.

Mr. Biggs: May that objection run clear through this testimony, Your Honor?

Mr. Dillard: Q. Go ahead, Mrs. Mershon, just tell us briefly how you happened to make out that check.

Two men came to the house one day. I had another couple of men come the week before. They told me I had bad trouble in my eyes and I would have to go to a Los Angeles hospital for treatment. I told them I couldn't afford that, and one of them, Dr. Miles, said he had very good medicine in his car

(Testimony of Mrs. Christine Mershon.)
right at the door and he would test my eyes. It was simply water; I didn't feel any pain or anything. He poured that in and then he took a little—it looked like the skin next to the shell of the egg. He said that was poison. Then he said the medicine would cost about three hundred dollars, he had to send to Paris, France, for it, and if it cost more or less he would bring back the change. I thought that was too much but he says no, he would bring back the change, and then I told him I had no money at home; that it was in a bank in Arlington. He said he would take me in his car down to Arlington. Another man with them, Dr. Avery went with us down to Arlington and there the banker reluctantly gave me the money. When I came out of the bank, they were a block [88] below; said they had to get some gas or something for the car. I went down and Dr. Miles said, "Have you got the three hundred (\$300.00)?" and I said, "Yes", and handed him the three hundred. They took me home, and they said they might come back to see if the medicine worked, but did not come again. The following week, another couple came, Dr. Pierce and Judge Thomas, and they said, "Did the medicine help you?" and I said, "No", and they said Dr. Miles was killed in Seattle, overrun by a car, and the last thing he said was to return to Mrs. Mershon the Three Hundred (\$300.00) Dollars she paid for the cure if she isn't cured. He said, "I will test your eyes", and then said, "No, it hasn't done any good, I will give you medicine for it", and he gave his name as Dr.

(Testimony of Mrs. Christine Mershon.)

Pierce. He said it would take \$450.00 more to pay the expenses. I told him I was sick and couldn't go to the bank that day. He furnished me a check blank which I signed. I gave it to Dr. Pierce. They told me the Banker would send the money as soon as I directed him to and promised to come with an electric belt that takes the disease out of ones system. They didn't come with the belt and didn't return the change and that is the last I have seen of them. We turned the cancelled check over to Mr. Welter. I saw Doctor Pierce outside here yesterday. (John M. Gray was thereupon produced in the court room.) The man you have just brought into the courtroom is the Dr. Pierce that I have referred to in my testimony.

MISS CLARA E. ALLEN

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

My name is Clara Allen and I live near Longmont, Colorado. I have examined Government's Exhibit 3 for identification which you have handed me and state that it is a draft given to me by W. E. Gregg of Boulder, Colorado, the Mercantile Bank. I made arrangements to have the bank issue it. After obtaining the draft [89] I gave it to a man that came with this Dr. Miles. I saw this Dr. Miles the day that I got this draft.

(Testimony of Miss Clara E. Allen.)

Q. Tell us about it. How did you happen to see him?

Mr. Biggs: If the Court please, may we have the same objection to this witness's testimony that has hitherto been made, and on the additional ground that it does not have to do with any charge set forth in the indictment?

The Court: Yes. The objection is overruled.

Mr. Biggs: And an exception, if the Court please.

The Court: Allowed.

Mr. Dillard: Q. All right, go ahead, Miss Allen. Just tell about seeing Dr. Miles.

Dr. Miles and another man came into my home on the 12th day of September, 1934, and Dr. Miles said that was his name; that he came from Chicago to Denver to treat a cancer case and this man was an oculist and he came out into the country with him to view the country, and this other man had some superior kind of spectacles that he wanted to put out in the country for an advertisement. They wanted to examine my eyes and Dr. Miles did that and he said I had a growth on my eyes of a cancerous nature and he said he had a little bit of this cancer medicine left that he used in Denver and that he could perform an operation in the home if I wouldn't say anything about it and that it would only take a few minutes and wouldn't be painful or anything. He performed the operation. He daubed something in my eyes, something that looked like a sponge and then in a few minutes he took out what looked like a round ball and then he stretched that

(Testimony of Miss Clara E. Allen.)

out in his fingers and it looked like skin. He put it in his pocket, I expect to have for the next dupe. Nothing was said about pay until after the operation. He hinted around to find out if we had any bonds and I answered "Yes", and he wanted to know if we had five hundred, and I said, "Yes", and so he made [90] out a bill for \$587.50. The eighty-seven dollars and a half was cash. The bonds were my brother's and he had to go over to Boulder with us. They said they would be back in the evening for their pay. They didn't come, but on the 23rd of September the man that was with Dr. Miles came out and said he was a solicitor sent out to collect Dr. Miles' bills, and he wanted me to pay him. He wrote out a receipt and signed it J. J. Cannon, someplace in Denver. I have examined Government's Exhibit 15 for identification and state that that is the receipt I have testified to. I have not seen these two men since, but there were two men that belonged to the gang that came last August.

(No Cross Examination)

MR. HERMAN H. HORACK

was thereupon produced as a witness in behalf of the United States, and having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

I am a detective of the Portland Police and have been so employed for nineteen years. I know the de-

(Testimony of Mr. Herman H. Horack.)
fendant, Joe Mazurosky. I have examined Government's Exhibit 1 and state that I have seen a photograph of it before. That was around December 18th, 1934. After getting the photograph, we took the check and went down to Mazurosky's store on the northeast corner of Sixth and Davis, in Portland. I showed Mr. Mazurosky the check and talked with him about it. The endorsement "Joe Mazurosky" appeared on the photograph of the check we had. I just asked Mazurosky if he had cashed a check and he said he had and that that was his signature. I then told him that the check was obtained in a bunco game, and he had told me that he didn't know how the check was got. He told me he didn't know the whereabouts of the party who gave it to him. He told me that the party was a doctor. Detective Eichenberger of the Portland Police was with me.

Cross Examination

By Mr. Biggs:

The conversation I have referred to was around December 18th or 20th, 1934. In this conversation with Joe I told him it was obtained in a bunco deal. He did not tell me that it was not so obtained. He told me that the check had come to him all right. I remember talking with Mr. Mazurosky concerning the identity of [91] these people; I recall that now. He said the party was a doctor. I recall testifying in this case before, in Portland.

Q. Do you recall my asking you on cross examination this question: "did you ask him anything about that, did you ask him who they were, who

(Testimony of Mr. Herman H. Horack.)

gave the check to him? Did you ask him that?"

"Answer: I don't believe I did." Do you recall giving that answer?

A. I don't recall saying that.

Q. Would you say that you had not said that?

A. I might have said that.

Q. Are the details of that conversation somewhat hazy in your recollection after the lapse of time?

A. In going back and running this thing over in my mind the things that will come back to you—I have a lot of cases and you know after you get on a case and you begin to look back at your records these things come back to you.

Q. And that is how this has come back?

Q. Now that you think about it it is your best judgment that at the previous trial you might have said that?

A. Yes.

(Redirect Examination.)

By Mr. Dillard:

I made a record at the time I interviewed Mr. Mazurosky. We made reports of our investigation at the time. I have seen part of the report since it was made. I have refreshed my recollection since this happened in 1934 by thinking over the different things that were said. In refreshing my memory I consulted a part of the original report that I mentioned. I do not remember whether Mr. Mazurosky told me that the check came to him in person or by mail.

ALBERT EICHENBERGER

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard: [92]

I am a detective of the Portland police and have been so engaged for thirteen and a half years. I was a detective in 1934. I know the defendant, Joe Mazurosky. I have heretofore seen a photostatic copy of the check you have handed me, Government's Exhibit 1 for identification. About December 20th, 1934, I talked with Joe Mazurosky about it, in the presence of Detective Horack. We had an inquiry regarding the check and from Mt. Vernon and we asked him if he had endorsed the check and he said that he did and that he had cashed it at the Bank of California. We asked him how he happened to get this check for \$450 and he said that a man had purchased some goods; that after he had cashed the check he had given the man the balance of the money back and kept the money that was due him on the merchandise that was bought. There was some discussion about the endorsements but I do not recall that. We did not find the party who had endorsed ahead of Mazurosky on the check.

(No Cross Examination)

E. F. MUNLEY

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

I am the auditor of the Bank of California, Portland, and have so served for about ten years. Referring to Government's Exhibit 4, I have here in the Court room the records of the bank concerning that check.

(The document was thereupon marked Government's Exhibit 27 for Identification.)

This is the original deposit slip.

(Another document was thereupon produced and marked Government's Exhibit 9 for Identification.)

Government's Exhibit 9 for identification is a record of our Bank concerning the Belter check which you handed me a while ago. We call this record a collection register. I am familiar with banking practices including the collection department.

(No Cross Examination)

DONALD G. ALLEN

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

I have charge of the savings department of the Bank of California, Portland, Oregon, and have

(Testimony of Donald G. Allen.)

been so employed for 18 years. When I first started at the bank I [93] was in the collection department.

(Two documents were thereupon produced and marked Government's Exhibits 8 and 28, respectively, for Identification.)

Referring to the blue slips marked Exhibits 8, 27 and 28 for identification, which you have handed me, will state that No. 8 was received by my assistant. There is no identification on here at all as to where the check was drawn on at all. The strip of paper is a deposit tag to Joe Mazurosky's account with the Bank of California. Exhibits 28 and 27 are deposit slips that were made and signed by Mr. Mazurosky depositing this to his savings account in our bank, the Bank of California. They all bear his signature. You have handed me Exhibits numbered 1, 4 and 5. This one is a photostatic copy bearing our endorsement; that went through and also the one from Rockford.

Q. Let me ask you, is there anything on the blue deposit slips, any record which enables you to identify the kind of a deposit that was made at the time?

A. Yes, sir, there are except for one and that is the one that my assistant took.

Q. Tell me about the two that you know about then. You have got three altogether.

A. The three hundred dollar check I took in. It bears my initial on the deposit tag, and that is on Rockford, Washington. The five hundred dollar

(Testimony of Donald G. Allen.)

check bears my initial on the deposit tag and was on Kennewick, Washington. The deposit tags were made out completely by Mr. Mazurosky, putting the number of the bank, which is a code with us, like 98-147 means Kennewick, Washington; 98 is the State of Washington, 147 means the First National Bank of Kennewick. That is for the benefit of the jurors. That is our code that we have, and in all cases except this other one Mr. Mazurosky put them on the deposit tag and made the numbers. I have in my hand a photograph of the Deibert check, Exhibit No. 5. I remember the circumstances under which that came into my hands when the deposit was made at the Bank by Joe Mazurosky. Mr. Mazurosky deposited it and asked that we send it direct instead of through the Federal Reserve Bank, for the reason that he wanted quick action, quick returns on the check. Also at his request we put a "No Protest" stamp on the face of the check, which is very unusual in the savings department—it is very common in the commercial but unusual in the savings because our checks are not handled in that way; they are not doubted [94] at all. In this case it was. On this check, payment was stopped and it was returned. The drawer of the check, the Farmers & Merchants Bank at Rockford, stopped the payment. Thereafter the check was returned to the Bank of California. I can't testify to the disposition of the check. It was not charged to the account that I know of. Mr. Mazurosky deposited that three

(Testimony of Donald G. Allen.)

hundred dollar check in his savings account in the Bank. It went thru the bank on which it was drawn and was returned with payment stopped. I can't say whether it was charged back to his account.

Referring to the Belter check, Government's Exhibit 4, we have a record of that one. This check was sent through the same way as I have explained before. Mr. Mazurosky asked that we send it direct to the bank because he wanted a return on it, and it was my fault that it didn't go. It didn't go direct. I will explain. Our checks as a rule go through the Federal Reserve Bank unless we make a special notation to what we call our transit department. I am referring to the Federal Reserve Bank in Portland. By going through the Federal Reserve Bank there is a delay of one day in getting returns. In order to put it through otherwise, we put a special notation and send it to our transit department and it goes direct to the bank. At the request of Mr. Mazurosky, we put the special notation on the check and also a "no protest" stamp at his request. This check was returned and I called Mr. Mazurosky up about it and asked him if he wanted us to charge the account and return it to him in the usual course through the mail and he said no, that he would come in and take it up. He did come in and signed a withdrawal slip charging his savings account:

(The withdrawal slip was thereupon produced and marked Government's Exhibit 29 for Identification.)

(Testimony of Donald G. Allen.)

I now explain the operation of the withdrawal slip in banking practice. It is nothing more than a receipt. It says: "Received from the Bank of California, Portland, Oregon, \$500," and Mr. Mazurosky presented his pass book, we charged his account with this \$500, and he signed the withdrawal, and in lieu of this we gave him this five hundred dollar check. We returned it. Referring to the Deibert check, I don't remember how he took it up. He came in and signed a withdrawal for the Belter check. I have looked at "triplicate form, No. 9." After the \$500 dollar check was returned, he signed a withdrawal for it and took it over to another department which is called the collection department and sent it through for collection. We sent it back to the First National [95] Bank of Kennewick, Washington. Referring again to the Belter check, we didn't through the bank channels charge it back. I phoned Mr. Mazurosky and he came into the bank and signed a withdrawal for the full amount and we then surrendered the check to him, the N. S. F. check, and we then charged his account for \$500. It showed in his savings account.

(Cross Examination.)

By Mr. Biggs:

It is unusual to send a check through for collection. We send them through if they are doubtful. Where we know a depositor it is very unusual.

Q. I mean for a depositor to deposit a check for collection.

A. It is unusual, yes.

(Testimony of Donald G. Allen.)

Q. You say it is unusual?

A. Yes.

Q. The bank does it every day, does it? It is a recognized practice?

A. Yes, we do it at the request of a customer.

We don't do it unless it is requested, and unless somebody is in doubt as to the check. We do it whenever we are requested to do it and we receive such requests occasionally. There is a recognized procedure for it. When the bank takes paper for collection, or for sending it direct, we have the right to charge for it. It is optional with us whether we charge for it or not. We did charge Mr. Mazurosky. The bank at Kennewick charges us and we receive no compensation ourselves. There is a clearing house rule giving us the right to charge according to a scale agreed on.

(Redirect Examination.)

By Mr. Dillard:

As to the Deibert check, Mr. Mazurosky made the request that a "No Protest" stamp be placed on it, that is all. The object of the "No Protest" stamp on a check is the fact that if it is refused by the bank which it is drawn on, then they have a right for suit. If they just return it to us then the person who draws the check has absolutely no proof that it was ever presented at the bank. That is the object of being protested. For instance, if this check had gone up there and they stopped payment on it, they would have to protest it; there is a notary fee on it,

(Testimony of Donald G. Allen.)

and it would prove that the check was presented on a certain date for payment and refused, [96] and the statement would be made why it was refused, either payment stopped, insufficient funds, or whatever it might be, but if a check goes to a bank and they refuse payment and send it back without protesting, then if a suit is started—it is just a proof, and that is all, that it was presented to the bank and that the bank refused payment on a certain date, but a “No Protest” stamp placed on there is an instruction from us that they are not to protest it or incur any legal fees on it at all, that we are willing to receive it back without that process. There would be a fee or charge to the depositor in case a protest stamp were affixed. Different states carry a different charge. The charges range in a varying schedule. It is an unusual procedure to put a “No Protest” stamp on a check received at the savings department. That is because the average depositor knows that the check is good; they are not doubtful at all and there are funds here to charge it back to if it was turned down in any way.

(Cross Examination.)

By Mr. Biggs:

I believe in the state of Washington they have either a three or four dollar protest charge and there is 25 cents for each notice sent. I am not sure as to the actual amounts. There are sometimes service charges in addition, and I have seen charges as high as \$8.50 for notary fees, and I have seen them for fifty cents.

ROBERT E. GOLDMAN

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn was examined and testified as follows:

By Mr. Dillard:

I am in the banking business at Rockford, Washington. I have examined Government's Exhibit 5 for identification, and state that I have seen an original check of which the Exhibit is a photograph. I know Mr. Deibert, the marker of the check. He was a customer of my bank at the time the check was written. There is a "payment stopped" notation on the check which was placed there by Miss Mills, the cashier of our bank. I was present at the time. After this notation was placed on the check, we mailed it back to the Federal Reserve Bank in Spokane. We put the "payment stopped" notation on the check because Mr. Deibert had come into the bank sometime in November and asked to borrow some money, saying that he was getting his eyes cured, and he asked me to fill out a note and hold it until the check came in and then place the note to his credit in the [97] bank and pay the check. The check came in and I called him up that morning, it looked kind of queer to me—and asked him if he wanted to pay the check and he decided he didn't want to pay it, and so I returned the check. We received the check from the Federal Reserve Bank in Spokane, Washington.

(Testimony of Robert E. Goldman.)

(Cross Examination.)

By Mr. Biggs:

We have two employees in the Rockford bank besides myself—the cashier, Miss Mills, and a young fellow that works there part times. We do not have a stenographer. Either Miss Mills or I handle the correspondence. Miss Mills takes care of returning the items and mailing the drafts to the Federal Reserve Banks for the checks that come in. I couldn't state that the check was placed in an envelope and deposited in the mails and returned to Spokane. I have no personal knowledge of the incident. Either Miss Mills or I take the mail down. I may have carried it down myself. I could not say. All of our correspondence of this kind is handled by mail.

(Redirect Examination.)

By Mr. Dillard:

At the time it was the custom of the bank to always use the mails in transactions of this kind.

J. L. BLISS

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

My occupation is that of assistant cashier of the First National Bank, Kennewick. I have examined

(Testimony of J. L. Bliss.)

Government's Exhibit 9 for identification which you have handed me and state that these are collection slips, to which was attached a \$500 check signed by H. F. Belter. I have examined Government's Exhibit 4, the Belter check, and recognize it as the original \$500 check. It was sent to us by the Federal Reserve branch of the Spokane Bank on September 21st, 1935, and we received it on September 23rd, 1935, and we returned it to the Federal Reserve Bank that same afternoon on account of uncollected funds. We finally received the check on September 28th, 1935, from the Bank of California, at Portland. At that time we received the documents I have in my hand, No. 9, accompanying the check. The check was received by us as a collection item. The check was paid at that time, September 28th, 1935, the same day we received it. [98] Government's Exhibit 9, the collection record, bears some notations in my own handwriting. Fifty cents is the exchange, at the rate of ten cents a hundred. We sent them a draft for \$499.50, a draft on the First National Bank of Portland. That is the correspondent bank of the First National Bank of Kennewick. We paid the Belter check the second time it came to the bank. We paid it with a draft.

(A document was thereupon produced and marked Government's Exhibit 11 for Identification.)

Government's Exhibit 11 for identification, is a draft on the First National Bank of Portland, Oregon. It was written on September 28th, 1935 for

(Testimony of J. L. Bliss.)

\$499.50, payable to the Bank of California, at Portland, Oregon. This is the draft which we sent in payment of the Belter check when it was finally paid. I made out and signed the draft myself. After making out the draft in payment of the Belter check when it was finally paid. I made out and signed the draft myself. After making out the draft in payment of the Belter check, I sent it by mail to the Bank of California, at Portland, Oregon. I sent it direct, not through the Federal Reserve, and then we stamped their collection slip "paid" with our bank stamp and took off the fifty cents charge. I put the draft in an envelope, addressed it, and put postage on it and then deposited it in the United States Mail directed to Portland. The draft is dated September 28th, 1935. It went out on the afternoon mail. The funds for payment of the Belter check were placed to Mr. Belter's account and credit on the same day this check came in, September 28th, 1935. There was a real estate mortgage on his property. The bank loaned him the \$500.

(Cross Examination.)

By Mr. Biggs:

I personally put the draft in the mail. I enclosed the draft in an envelope, addressed it, stamped it and dropped the envelope in the mailbox. When the Belter check came to the bank and there was money available to pay it, we cashed the check.

Q. That is, you charged his account and credited your own account O the bank's account—with five hundred dollars; isn't that correct?

(Testimony of J. L. Bliss.)

A. This five hundred dollar check—the original five hundred dollars, was placed to Mr. Belter's account and then we charged this five hundred dollar check up to his account.

Q. That means you deducted that five hundred dollars from his account and you credited the bank's account? [99]

A. Credited the bank's account with this draft.

Q. That is, your own bank's account?

A. Yes.

Q. In other words, you cashed the check, did you not?

A. Yes. For cashing the check and making out the other check, we charged a fee of fifty cents. We then forwarded it to the other bank. It is customary for banks to make a charge of that kind at the rate of ten cents a hundred dollars. It is an agreed rate. The rates vary with banks in other districts.

ROBERT C. GEENTY

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Dillard:

I am a teller, with the U. S. National Bank of Portland. I was so employed during the year 1934 in the collection department. I have examined Government's Exhibit 3 for identification, the Allen

(Testimony of Robert C. Geenty.)

bank draft which you have handed me, and state that I have seen that document before. I have with me some records of the bank concerning it. Naming these records, they are a copy of collection receipt in the name of Joe Mazurosky covering a five hundred dollar draft drawn by the Mercantile Bank of Boulder, Colorado, on the U. S. National Bank of Denver, Colorado. It is signed by Joe Mazurosky and signed by myself. The document refers to the Allen draft which you gave me; it bears the corresponding number; 283427 is on the endorsement on the back of the draft and also on the receipt, our collection record—out-going record. I call these documents the record and the receipt. The receipt was what I described first. The draft was presented to us on September 25th, 1934, by Joe Mazurosky, for collection with instructions to send air mail, wire fate, rush, and it was sent out that day to the Federal Reserve Bank of Denver, Colorado, for presentation to the U. S. National Bank of Denver, with the instructions to wire fate, and on September 27th we received a wire stating the collection was paid.

(A document was thereupon produced and marked Government's Exhibit 30 for identification.)

Exhibit 30 for identification is what we call a duplicate collection receipt. The words "Joe Mazurosky" in the left-hand corner, must have been

(Testimony of Robert C. Geenty.)

placed there by Joe Mazurosky, because we don't take checks for collection unless the depositor is [100] properly identified. The check was presented to me and I signed the receipt. That is my writing. I made it out. My writing on the receipt refreshes my recollection with respect to the conversation I had with Mr. Mazurosky. Mr. Mazurosky told me on presentation to collect the check for him, send it air mail, wire payment or non-payment. Mr. Mazurosky received the proceeds of the check. The blue document attests that.

(The document was thereupon marked Government's Exhibit 31 for identification.)

The document marked Government's Exhibit 31 for identification, which you have handed me, is our check. When we received the wire that the check was paid, we issued a collection department check payable to Joe Mazurosky, signed by an officer of the bank, for \$498.60, and it was endorsed by Joe Mazurosky and O. K.'d by myself and cashed by our payroll teller. It bears Payroll stamp No. 2. The check was sent east for collection by air mail. I put it in an envelope and addressed it and paid the postage on it and put it in the United States mail.

Cross Examination

By Mr. Biggs:

I did not personally do that nor did I see anyone do it. It is the usual procedure and that is

(Testimony of Robert C. Geenty.)

what I base my conclusion on. The check was in the amount of \$500, and after it was collected, I paid over the proceeds of \$498.60. Part of the charge was for wiring and part for collection. Our collection charge was fifty cents. The charge varies according to the amount.

Redirect Examination

By Mr. Dillard:

It is the custom of the bank in sending items for collection to use the air mail or the regular mail.

Stipulation of Counsel

By Mr. Strayer:

That is correct, your Honor. It is stipulated that an original check dated December 6th, 1935 on the Farmers & Merchants Bank of Rockford, Washington and payable to J. C. Adams in the sum of three hundred dollars, signed E. C. Deibert, endorsed J. C. Adams and Joe Mazurosky, of which Government's Exhibit 5 is a photostatic copy [101] hereof, was sent by the Federal Reserve Bank of San Francisco, Portland branch, from Portland in the State and District of Oregon on December 7th, 1935 to the Federal Reserve Bank of San Francisco, Spokane Branch, at Spokane, Washington; that said check was on December 9th, 1935 sent by the Spokane branch of the Federal Reserve Bank of

San Francisco to the Portland branch of the Federal Reserve Bank of San Francisco in Portland in the State and District of Oregon. It is further stipulated that it was the custom of both the Spokane and the Portland branches of the Federal Reserve Bank of San Francisco at the times that the check was so sent to forward all such items by the United States mail.

Mr. Biggs: We will waive the question of its being a photostatic copy, Your Honor, and make no point of the fact that the Government has not the original check, and we will further stipulate in accordance with the matter just dictated into the record; not to the fact of making, but the fact that it was sent and that it was the custom to send by mail, if the Court please, and the defendant personally consents to that fact.

The Defendant: Yes, that is right.

The Court: The record may so show, and a written stipulation may be signed by the Government counsel, counsel for the defendant, and by the defendant.

Thereupon a further stipulation was read into the record as follows:

It is stipulated and admitted by the defendant in open court that the check referred to in Count 1 of the indictment, being Government's Exhibit No. 1 signed Christine M. Mershon, was presented at the Portland, Oregon branch of the Bank of California, N. A., for deposit in the savings account of the defendant by the defendant personally on or

about the 30th day of October, 1934, and that said check was sent by a messenger in the ordinary course of banking business from the Bank of California to the Portland branch of the Federal Reserve Bank of San Francisco, being received by that bank on the 30th day of October, 1934, according to the custom and usage of banking practice and the course of business of the respective banks, and on the same day was forwarded by the Portland branch of the Federal Reserve Bank of San Francisco at Portland in the State and District of Oregon to the Seattle branch of the Federal Reserve Bank of San Francisco; that it was the custom and practice in the ordinary course of business of the Portland branch of the Federal Reserve Bank at said time to [102] enclose checks so received for collection in a postpaid envelope addressed to the member bank to which the same was to be sent and to place the same in the United States postoffice at Portland, Oregon to be sent and delivered by the postoffice establishment of the United States according to the address and direction thereon.

Mr. Strayer: May I interrupt? The testimony refers to certain exhibits which have been identified and not received in evidence. I think before we continue with the stipulation we should now offer in evidence the exhibits which have been identified.

Mr. Biggs: If the Court please, we will make a general objection to the introduction of any of these exhibits on the ground and for the reason that they relate to transactions and are in connection with

transactions about which the defendant had no knowledge and which the record shows he had no knowledge of; that in connection therewith statements have been made by others in the absence and not in the presence of the defendant Mazurosky; on the further ground that there is no evidence that to the defendant's knowledge these checks were taken in furtherance of any unlawful enterprise, there being no evidence that there was any conspiracy or agreement on the part of the defendant that checks or any checks might be taken pursuant to such a scheme to defraud. Now with respect to the checks, and I haven't the exhibit numbers right at hand—with respect to the Allen check particularly, Your Honor, and any checks which have not been set forth in the indictment, and the Wagner check——

Mr. Strayer: The Wagner check is in evidence.

Mr. Biggs: Oh, is it in evidence? The further objection is made that they relate to transactions upon which no crime is charged by the Government and which are not contained in the indictment or described in the indictment. I think that objection, Your Honor, covers it. There may be other grounds, but I think that covers it.

The Court: The objection is overruled. The question whether there is a conspiracy or unlawful agreement by the defendant with other persons in this case is a question for the jury, upon which they will arrive at a conclusion on consideration of the evidence. The question of whether these transactions which did take place out of the hearing of the defendant, without his personal participation

at the time, were to his knowledge and whether he was a participant or not is a jury question also, to be solved by the jury under the instructions. The objections are overruled. As to the Allen check—which transaction was that? [103]

Mr. Biggs: The Allen check is the Colorado case; it relates to Government's Exhibit

Mr. Strayer: Three.

The Court: The Court admits the document on the ground that it may tend to show a similar transaction and may tend to show a participation by the defendant in some transaction in which the other persons were engaged who were engaged in that particular one, and may therefore throw light on the connection of the defendant with these particular persons involved in the transaction relation to the Allen check. That transaction and the check are admitted in evidence for the purpose of showing either knowledge or intent or participation in other transactions named in the indictment.

Mr. Biggs: May I have an exception, Your Honor?

The Court: Exception is allowed.

Mr. Strayer: I understand it is your Honor's ruling that all exhibits marked for identification are admitted?

The Court: Unless there are others to which my attention hasn't been called specifically.

(The documents heretofore marked Government's Exhibits 1, 3, 8, 9, 11, 15, 27, 28, 29, 30 and 31, respectively, for identification, were thereupon received in evidence.)

The Court: You may proceed, Mr. Holmes.

(The balance of the stipulation was thereupon read by the reporter as follows:)

It is stipulated and admitted by the defendant in open court that the check referred to in Count 2 of the indictment, being Government's Exhibit No. 4, signed H. F. Belter, was presented at the Portland, Oregon branch of the Bank of California, N. A., for deposit in the savings account of the defendant by the defendant personally on or about the 20th day of September, 1935, and that said check was sent by messenger in the ordinary course of banking business from the Bank of California to the Portland branch of the Federal Reserve Bank of San Francisco, being received by that bank on the 20th day of September, 1935 according to the custom and usage of banking practice and the course of business of the respective banks, and on the same day was forwarded by the Portland branch of the Federal Reserve Bank of San Francisco at Portland in the state and district of Oregon to the Spokane branch of the Federal Reserve Bank of San Francisco; [104] that it was the custom and practice in the ordinary course of business of the Portland branch of the Federal Reserve Bank at said time to enclose checks so received for collection in a postpaid envelope addressed to the member bank to which the same was to be sent and to place the same in the United States postoffice at Portland, Oregon to be sent and delivered by the postoffice establishment of the United States according to the address

and direction thereon, and said check was received by the Spokane branch of the Federal Reserve Bank of San Francisco on the 21st day of September, 1935.

It is stipulated and admitted by the defendant in open court that the check referred to in Count 3 of the indictment, being Government's Exhibit No. 4 signed H. F. Belter was presented at the Portland, Oregon branch of the Bank of California, N. A., to the collection department of said bank, for collection by the defendant personally on the 27th day of September, 1935 and on that day was forwarded from Portland, Oregon by said bank for collection to the bank upon which it was drawn, namely, the First National Bank of Kennewick, Washington, at Kennewick, Washington; that it was the custom and practice and ordinary course of business of the Bank of California at that time to transmit such items for collection by enclosing the same in an envelope addressed to the addressee with postage prepaid and placing the same in the United States postoffice at Portland, Oregon, to be sent and delivered by the postoffice establishment of the United States according to the address and direction thereon, and said check, together with Government's Exhibit 9, was received at Kennewick, Washington by the addressee, the First National Bank of Kennewick, Washington, on the 28th day of September, 1935; that it was the established banking practice, custom, and the usage of the said First National Bank of

Kennewick, Washington to receive such collection items through the United States mails.

It is stipulated and admitted by the defendant in open Court that the draft referred to in Count 4 of the indictment, being Government's Exhibit No. 11, signed Jay D. Bliss, was on or about the 28th day of September, 1935 forwarded by said First National Bank of Kennewick, Washington, to the Bank of California, N. A. at Portland, Oregon; that it was the custom and practice and ordinary course of business of the First National Bank of Kennewick, Washington at that time to transmit such items by enclosing the same in an envelope addressed to the payee with postage prepaid and placing the same in the United [105] States postoffice at Kennewick, Washington be sent and delivered to the addressee thereof by the postoffice establishment of the United States according to the address and direction thereon; that the said Exhibit 11 was received by the Bank of California, N. A. at Portland, Oregon on or about September 29th, 1935.

Mr. Strayer: If the Court please, may we have the defendant now state in open court that he agrees to the terms of the stipulation?

The Defendant: Yes, Your Honor.

Mr. Biggs: And counsel will so stipulate.

Mr. Strayer: Both counsel?

Mr. Biggs: Both counsel.

FRANK L. KELLER

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Strayer:

My name is Frank L. Keller, and I reside at Portland, Oregon. I am chief clerk at the Western Union office in Portland and have served as such for twenty years. I have in my custody a record of telegrams sent from the Portland office of the Western Union. I have a record of two money transmittals by Joe Mazurosky in the year 1935 and one in 1936.

(A copy of telegram was thereupon marked Government's Exhibit 32 for identification.)

I have in my possession a document other than the one marked Exhibit 11 for identification, which has reference to that Exhibit.

(The document was thereupon marked Government's Exhibit 33 for identification.)

Government's Exhibit No. 33 is an official record of my office. I know the defendant, Joe Mazurosky, but do not know his signature. I have no personal knowledge of Exhibits 32 and 33 for identification; only as they were in the records, that is all. About four months ago I had a discussion with Mr. Mazurosky in our office about the documents. He asked me to secure for him information on money orders that he had sent over certain periods of time in '34 and '35. He only wanted information as to who they were going to and the amounts and the dates. We

(Testimony of Frank L. Keller.)

endeavored to locate them between the dates that he gave us and did locate such records. I am referring to Exhibits 32 and 33 for Identification. [106]

(The documents heretofore marked Government's Exhibits 32 and 33, respectively, for identification, were thereupon received in evidence without objection.)

We had no further talk with Mr. Mazurosky after we located the records, but we talked with him twice concerning the locating of the records. About a month after the first conversation which I mentioned, I had another talk with Mr. Mazurosky at our office. We hadn't found enough to satisfy him and he gave us some additional dates in which to search, and we covered a wider spread of time. We were to look under two names, Mazurosky and Morris, which were to be names of the sender. He said he might possibly have shown the name of the sender as "Morris", and for us to watch for that name. He didn't know the name of the receiver, and that was the information he wanted us to secure for him. I don't recall whether he said there was more than one receiver. I made no memorandum of the conversation; I just took the dates and names.

Cross Examination

By Mr. Biggs:

Referring to Exhibit 32, the words "agony dream" refer to the amount of money that was to be paid. They are a part of our money code. We only searched our records for money orders. One of the

(Testimony of Frank L. Keller.)

Exhibits we had in our Portland files; the other one had to be returned from San Francisco from the auditor, but they all went through the Portland office. They both relate to the same transaction.

Redirect Examination

By Mr. Strayer:

I am not familiar with the codes and cannot say what amount of money is meant by the words "agony dream." It is shown here to represent \$387.50.

A. C. THORSEN

was thereupon produced as a witness in behalf of the United States, and, having been first duly sworn, was examined and testified as follows:

By Mr. Strayer:

My name is A. C. Thorsen. I reside at Portland, Oregon and am City superintendent of Postal Telegraph, which position I have held for over five years. I have a record of a money transmittal through the Postal Telegraph by the defendant, Joe Mazurosky.

(The document was thereupon marked Government's Exhibit 34 for identification.) [107]

The Exhibit 34 for identification is an official copy of the telegraphed money order as sent on October 20, 1934, by Joe Mazurosky.

(The document heretofore marked Government's Exhibit 34 for identification was thereupon received in evidence without objection.)

(Testimony of A. C. Thorsen.)

Referring to the Exhibit, the words "destiny dale ages submit seal" represent \$195.92. The first word, "relax" is what we call a guard word of which we have one for each city, and it is used to check certain money transfers so there will be no fraud between different offices and they run in numerical order. Each office has a number. It is just a code word for a number.

C. B. WELTER

was thereupon recalled as a witness in behalf of the United States, and, having been heretofore duly sworn, was examined and testified further as follows:

By Mr. Dillard:

On the 25th day of August, 1936, and on the 21st day of April, 1937, I talked with Joe Mazurosky concerning certain checks sent through the United States mail. In the second conversation, Mr. Mazurosky stated: "When you talked with me last summer in regard to the Elvin check, and told me to go home and sleep on it and come back to your office the next day, you know I didn't sleep any that night, or for several nights afterwards", and he volunteered the information that the checks were probably obtained in some illegal way, but he didn't know for certain and he couldn't see what harm there would be in the event that he cashed the checks.

(Testimony of C. B. Welter.)

Then in response to my statement to him that there must have been at least a dozen of those checks, he said: "I guess there was that many." Then I said, "Joe, you know you got ten and fifteen per cent commission on those checks," and he made no reply.

Cross Examination

By Mr. Biggs:

I investigated this case for the United States Government. Mr. Martin is at this time in the Federal Penitentiary at Atlanta, Georgia. I told Joe at the conversation mentioned above, that he was getting ten or fifteen per cent commission on the checks, and he made no answer. I recall testifying in the case before, and I there testified to the same effect, but it is not in the record of that proceeding. The facts are as I stated them above, and I so testified at the former trial. If the record of the former trial does not state the conversations as I testified above, then the reporter [108] at the previous trial made a mistake.

Redirect Examination

By Mr. Dillard:

Whatever the record of the previous trial shows, I am now testifying to the facts as they occurred at the time.

By Mr. Dillard:

We rest our case, Your Honor.

(The following exhibits were offered and received in evidence.) [109]

GOVERNMENT'S EXHIBIT 1.

“ Oct 29 1934 No.....

Arlington State Bank

Write name of your bank (city and state) on
this line

Pay to the Order of.....\$450.00

Four Hundred fifty & no/100.....Dollars

For value received I claim that the above amount
is on deposit in said bank in my name subject to
this check and is hereby assigned to payee or holder
hereof.

CHRISTIAN M. MERSHOM

Address.....”

(Endorsed on back) H. J. Pierce
O. C. Stone
Joe Mazurosky

Pay to the order of any Bank or Banker or
through the Seattle Clearing House Assn.

All prior endorsements guaranteed

Oct 31 1934

19-1 Seattle Branch 19-1

Federal Reserve Bank of San Francisco

Pay to the order of any Bank or Banker or
through the Portland Clearing House Assn.

All prior endorsements guaranteed

Oct 30, 1934

24-1 Portland Branch 24-1

Federal Reserve Bank of San Francisco

Pay to the order of any Bank or Banker or
Trust Co.

All prior endorsements guaranteed

24-6 Oct 30 1934 24-6

The Bank of California, N. A.
Portland, Oregon

GOVERNMENT'S EXHIBIT 3

"The Mercantile Bank & Trust Co. No. 53927
82-22

Boulder, Colo. Sept. 12 '34

Pay to the Order of Clara E. Allen \$500.00

Five Hundred Dollars.....Dollars

To United States National Bank

23-14 Denver, Colorado

W. E. GRAZZU,
Cashier.

(Endorsed on back) Pay to the order of
Dr. H. J. Miles
Miss Clara E. Allen
Dr. H. J. Miles
Joe Mazurosky [110]

Pay to the Order of Any Bank or Banker
The United States National Bank
Portland, Oregon

All prior endorsements guaranteed

Coll. No. 283427

27 Sept 1934

Paid

Denver Branch Federal Reserve Bank. All prior
endorsements guaranteed.

GOVERNMENT'S EXHIBIT 4

"The First National Bank 98-147

Kennewick, Wash., Sept. 20, 1935

Pay to the Order of J. C. Adams \$500.00

Five Hundred and no/100 Dollars

H. F. BELTER

No. 345 (Safe Deposit)

(Boxes for)

(Rent)

(Endorsed on back) J. C. Adams Joe Mazurosky

Pay to the order of Any Bank, Banker or Trust
Co. All prior endorsements guaranteed.

24-6

Sept 20 1935

24-6

Bank of California, N. A.

Portland, Oregon.

Pay to the order of any Bank or Banker or
through the Spokane Clearing House. All prior
endorsements guaranteed. Sept. 21, 1935

28-1

Spokane Branch

28-1

Federal Reserve Bank of San Francisco

Pay to the order of any bank or banker or thru
the Portland Clearing House. All prior endorse-
ments guaranteed. Sept. 20, 1935

24-1

Portland Branch

24-1

Federal Reserve Bank of San Francisco

Pay any Bank or Banker. All previous endorse-
ments guaranteed.

24-6

Sept 27 1935

24-6

The Bank of California, N. A.

Portland, Oregon

GOVERNMENT'S EXHIBIT 5

“District No. 12 Member Federal Reserve System.

Farmers & Merchants Bank 98-186
Rockford, Wash. Dec 6 1935 No.....
Payment stopped.

Pay to the order of J. C. Adams \$300.00
Three Hundred and no/100 Dollars

E. C. DEILIERA

N. P. 24-8”

(Endorsed on the back J. C. Adams Joe Mazurosky

Pay to the order of any Bank or Banker or
through the Portland Clearing House. All prior
endorsements guaranteed. Dec. 7 1935

24-1 Portland Branch 24-1

Federal Reserve Bank of San Francisco

Pay to the order of any Bank or Banker or
Through the Spokane Clearing House. All prior
endorsements guaranteed. Dec 9 1935

28-1 Spokane Branch 28-1

Federal Reserve Bank of San Francisco [111]

GOVERNMENT'S EXHIBIT 7

"98-37

Vancouver, Wash. Nov. 14 1925

Washington Exchange Bank Payment stopped.

Pay to the Order of O. A. Plummer \$500.00

Five Hundred 00/100 Dollars

Exactly Five Hundred Dollars Exactly Exactly

HENRY WAGNER

Good for \$500.00 When properly endorsed 12

Lloyd DuBois

P. M. Nov 18 1925

(Endorsed on back) O. A. Plummer Henry Wag-

ner O. A. Plummer Joe Mazurosky

Cancelled

O. A. Plummer

C-15297

786 Kearney St.

Be 5581

GOVERNMENT'S EXHIBIT 8

Savings Deposit

Savings Account No. 21630 Balance \$2594.84

Deposited with

The Bank of California

National Association

Subject to conditions below

By Joe Mazurosky

Portland, Ore., Oct 30 '34

City items credited subject to actual payment.
 Checks on this bank will be credited conditionally
 and if not found good at the close of business the

day of deposit, they will be charged back to depositor and the latter notified. Checks on other banks in this city will be carried over for presentation the following day. In receiving out of town items for deposit or collection this bank acts in all cases as the agent of the depositor and it and its collecting agents may accept cash or bank draft in payment of such items and shall not be answerable for items lost in transit or for any act or default of any bank who may receive such items for collection either directly or indirectly, and shall only be held liable when the item has been paid by the drawee, and proceeds in actual funds or solvent credits shall have come into its possession. Under these conditions items for which actual funds or solvent credits have not been received by this bank may be charged back to the depositor's account.

Dollars Cts

- 1. Federal Reserve Bank
 - 2. Canadian Bk. of Com. Currency
 - 4. First National Bank Silver
 - 6. The Bank of California, N. A.
 - 11. U. S. National Bank.
- Checks as follows 450 00

Savings Teller No. 2,
 Oct 30 1934 24-6 Oct 30 '34 LW 2,144.84

[112]

GOVERNMENT'S EXHIBIT 9

Return to The Bank of California, 24-6
National Association
Portland, Oregon.

Report By our No. 68646

Date 9/27/35

Receipt of the following is acknowledged.

By First Natl Bank Kennewick Wn
Payer Yourself By H F Belter

Joe Mazurosky 202 N W 6th Ave
Cr. Sav.

Protest No Date 9/20 Due Dmd

Amount 500.00

.50 Ex

499.50

Comments and special instructions

Please Hold for a few days if necessary
Remit in Portland Exchange

Signature J

First National Bank Sept 28, 1935 Paid
Kennewick, Wash.

Credit Country Collection Department
 The Bank of California, 24-6
 National Association
 Portland, Oregon

Date 9/27/35 No. 68646

First Natl Bank Kennewick Wn
 Credit to Joe Mazurosky 202 N W 6th Ave
 21630

Cr. Sav.

Payer Yourselfs by H F Belter
 Protest No Date 9/20 Due Dmd
 Amount 500.00
 Cost us .50

 499.50

Documents and special instructions
 Please hold for a few days if necessary
 Remit in Portland Exchange
 Sept 30 '35 2,245.62

Paid and credited to your account
 Sept. 30 1935
 The Bank of California, N. A.
 Portland, Oregon.

Department Record

File Under No. 68646

The Bank of California, 24-6

National Association

Portland, Oregon

Date 9/27/35

We enclose for collection

Collecting Bank

First Natl Bank

Kennewick Wn

Depositor Joe Mazurosky 202 N W 6th Ave

Cr. Sav.

Payer Yourselfs by H F Belter

Protest No. Date 9/20 Due Dmd

Amount 500.00

Cost us .50

 499.50

Documents and special instructions

Please hold for a few days if necessary

Remit in Portland Exchange

Paid and Credited to your Account Sept 30, 1935

The Bank of California, NA

Portland, Oregon

[113]

GOVERNMENT EXHIBIT 11

98-147 12

The First National Bank

Kennewick, Wash., Sept 28 1935 193 No. 40246

Pay to the Order of The Bank of California, N. A.,
Portland, Oregon \$499.50

First Nat'l. Kennewick \$499 and 50 cts

To The First National Bank

24-4 Portland, Oregon.

JAY D. BLISS

C Cashier

(Endorsed on back) Received payment thru Clear-
ing House 24-6 Sept 30 1935 Portland
Oregon The Bank of California, N. A.
Collection Sept 30 1935 Department

GOVERNMENT EXHIBIT 15

9/23/34

Recd from Miss Clara E. Allen Five Hundred
eighty seven (\$587.50) in full payment of acct.
due Dr. H. J. Miles Recd. by J. J. Carson
710 Republic Bldg Denver

GOVERNMENT EXHIBIT 26

Farmers & Merchants Bank 97-186
 District No. 12 Member Federal Reserve System
 Rockford, Wash. Dec 6 1935 No.....

Payment stopped

Pay to the Order of J. C. Adams \$300.00
 Three Hundred and no/100 Dollars

E. C. DEIBERT

N. P. 24-8

(Endorsed on the back) J. C. Adams Joe Mazu-
 roskey

Pay to the order of any bank or banker or
 through the Portland Clearing House All prior
 endorsements guaranteed Dec 7 1935

24-1 Portland Branch 24-1
 Federal Reserve Bank of San Francisco

Pay to the order of any bank or banker or
 through the Spokane Clearing House All prior
 endorsements guaranteed Dec. 9 1935

28-1 Spokane Branch 28-1
 Federal Reserve Bank of San Francisco

[114]

GOVERNMENT EXHIBIT 27

Savings Deposit

Savings Account No. 21630 Balance \$2745.62
Deposited with The Bank of California National
Association Subject to the conditions below.

By Joe Mazurosky Portland, Ore. Sept 20 '35

(Conditions, beginning with words "City items credited" and ending with words "Back to the depositor's account" exactly the same as on Exhibit 8.)

	Dollars	Cts
1. Federal Reserve Bank		
2. Canadian Bk. of Com.		
4. First National Bank	Currency	
6. The Bk. of California, N. A.	Silver	
11. U. S. National Bank	Checks as follows	
	98-147	500 00

A

92

Sept 20 '35 2,245.62

GOVERNMENT EXHIBIT 28

Savings Deposit

Savings Account No. 21630 Balance 2500.12
Deposited with The Bank of California National
Association Subject to the Conditions below

By Joe Mazurosky

Portland, Ore. Dec. 6 '35

(Conditions, beginning with words "City items credited" and ending with words "Back to the de-

positor's account'' exactly the same as on Exhibits 8 and 27)

1. Federal Reserve Bank
2. Canadian Bk. of Com.
4. First National Bank Currency Dollars Cts.
6. The Bk. of California, N. A. Silver
11. U. S. National Bank

Checks as follows

	98-186	300 00
	92	

A

6 '35 2,200.12

GOVERNMENT EXHIBIT 29

Entered By A

Savings Department Withdrawal

New Balance \$2,245.62

Portland, Oregon Sept 20 1935

Received from The Bank of California, Portland,
Oregon Five Hundred Dollars, \$500.00

Sept 26 '35 92

Account No. 21630 Joe Mazurosky

No payments will be made without the pass book

[115]

GOVERNMENT EXHIBIT 30.

315

Subject to conditions printed on back hereof, this receipt must be returned to bank.

Not transferable.

The United States National Bank
Portland, Oregon

\$500.00

Duplicate

9/25/34

Received for collection for account of Joe Mazurosky.

Address: 202 N. W. 6th

Item Draft U. S. Natl Denver Colo.

283427

Instructions Air Mail Wire fate Rush

The United States National Bank

Per Gunty

Teller

The undersigned hereby agrees to the terms and conditions of this receipt.

Joe Mazurosky,

Signature of Owner

(on back)

Important Notice

In receiving items for deposit, credit, or collection, the bank acts only as depositor's collecting agent, and assumes no liability for the insolvency or negligence of its direct or indirect collecting agents, nor for losses in transit, and each such agent selected shall only be liable for its own negligence.

All items are credited conditionally, at time of deposit, and for the convenience of the depositor, and may be sent directly or indirectly to the bank upon which they are drawn, and the bank may accept from any drawee bank, or collecting agent, an exchange draft or credit therefor, as conditional payment in lieu of cash, and the bank will only be liable when the proceeds in actual funds, or solvent credits, come into its possession. The bank may charge back any item at any time before ultimate payment, whether returned or not; also any items drawn on the bank not good at the close of business on the day deposited." Past due payments shall be accepted unless instructed in writing to the contrary. It is the Bank's present intention to send the debtor periodical payment notices, but it shall not be liable for failure, inadvertent or otherwise, to send any such notice or notices.

Letter to D/A Boulder Colo 11/3/35

GOVERNMENT EXHIBIT 31.

Collection No. 21018
 Department. Portland, Ore. Sept. 27 1934

24-11 United States National Bank

Pay to the order of

Joe Mazurosky \$498.60

Four Hundred ninety eight and 60/100.....Dollars

T. F. DUNN,

A Cashier.

Countersigned:

Edwin Hallwyler
Teller

Not negotiable

This Check for use only between departments
within this bank. [116]

(endorsed on back) Joe Mazurosky

O K Genty.

GOVERNMENT EXHIBIT 32.

The Western Union Telegraph Company
Incorporated
Money Order Message

1936 Jul 7 A M 10 54

Number 4 AB Check 13 Office from: Portland, Org.

July 7 1936 1049a

MOD (stamp indistinguishable)

Butte Mont

Agony Dream fifty cents to R E Terrell will call

WU Joe Mazurosky

(sig.) MOD

Time 1053 A

Not to be transmitted

202 NW 6th Be 5766 smr tqr

GOVERNMENT EXHIBIT 33	387.50
Western Union Money Order	Amount 387.50
No. 407	Money order charge 1.60
Time filed 7604	Telegram tolls .97
Received by #258	.05
Sent by 07	Total 390.12

Subject to the conditions below and on back hereof, which are hereby agreed to.

July 7 1936

PR Portland Oreg. Jul 7 1936 AB

Pay to R. E. Terrell

W.C.

Street address Western Union

Place Butte, Mont

Amount Three Hundred eighty seven and 50/100

Dollars and cents (\$387.50)

(A message, to be delivered with the money, costs but a little more and saves a separate telegram. It may be written on the following lines)

Message to be delivered with the money:.....

Signature JOE MAZUROSKY

Sender's Address for reference 202 N. W. 6th Ave.

Sender's Telephone Number Be 5766

Positive evidence of personal identity is not to be required from the Payee, and I authorize and direct the Telegraph Company to pay the sum named in this order at my risk to such person as its agent believes to be the above named Payee unless the following is signed:

Positive personal identification required. I desire that the above named payee shall be required to produce positive evidence of personal identity before payment is made.

Signature.....

GOVERNMENT EXHIBIT 34

Money Order Message

Postal Telegraph—Cable Company

No. 12

Check 16 Transfer

(office) Portland, Oregon, Oct. 20, 1934.

To Transfer Agent

at Seattle, Washn.

E 117 217 EA

(guardword) Relax (Name of payee) R. E. Terrell

(address of payee) care Postal Telegraph Seattle

(Code word for amount) Desting Dale Ages Submit

Seal

(from—name of sender) Joe Mazurosky 195.92

.43

100.00

1.10

90

197.45

5.90

OT

2

No. 54.

195.92 (202 N. W. 6 Ave.) [117]

By Mr. Biggs:

Now, if it please the Court, the defendant at this time moves the Court for its Order directing a verdict of not guilty as to each of the counts of the indictment. Does the Court want me to proceed?

The Court: I think you had better rest your case first.

Mr. Biggs: Very well. That is preliminary to the motion. The Government having rested and the defendant at this time resting, moves the Court for its order directing a verdict of not guilty as to each of the counts in the indictment, on the ground and for the reason that there is no substantial evidence sufficient to submit to the jury which establishes or tends to establish the connection of the defendant with any scheme or artifice to defraud, or the particular scheme or artifice to defraud described and set forth in each count of the indictment, or the use of the mails pursuant to said scheme, there being no conscious participation of the defendant in such scheme. With respect to the count of the indictment relating to the defendant's alleged connection with Roy Martin, John Gray, and others, for the further reason that there is no testimony whatsoever connecting the defendant with any criminal device, scheme, intent, or plan on their part, all of the testimony admitted being the testimony of acts or declarations of alleged co-conspirators, and there is an inadequate prima facie showing of a conspiracy.

The Court: Which count is that, now?

Mr. Biggs: That is Count 1 of the indictment, Your Honor, and also Count 7 of the indictment, being the conspiracy count, and for the further ground that there is no substantial evidence that the United States mails were used by the defendant voluntarily or involuntarily or at all in connection with this.

Thereupon the following proceedings were had:

The Court: The Court at this time denies the motion for a direct verdict as to Counts 4, 7 and 8 of the indictment, and grants the motion as to Counts 1, 2, 3, 5 and 6.

Mr. Biggs: Does the Court desire a verdict to be prepared on those counts?

The Court: No, it can be included in the general verdict.

Mr. Biggs: And may we have an exception to the Court's ruling as to Counts 4, 7 and 8 of the indictment?

The Court: Yes. [118]

(Thereupon the matter was argued to the jury by counsel for the respective parties, and at the close of argument the Court instructed the Jury as follows:)

The Court: Gentlemen of the Jury, you have now heard all of the evidence and the arguments of counsel in the case of the United States of America against Joe Mazurosky, defendant, and it is now my privilege and duty, Gentlemen, to outline for you the principles of law upon which these matters

are to be determined and the guilt or the innocence of the defendant as to certain charges of this indictment decided.

I appreciate very much the temper of this jury as to the fact that the Court has found it necessary to confine you during the course of this trial and keep you away from your ordinary occupations and pursuits. The Court felt it was necessary to do that in the discharge of its duty. I am much pleased, Gentlemen, to note that you have accepted it in good part and with full consideration of the fact that it was as unpleasant for the Court to do it as it was for you to remain confined.

I have noted also with a great deal of pleasure the fact that you have followed this voluminous evidence and the ramifications of these transactions with great interest, and it is with entire satisfaction that I now submit the issues of fact to you for determination.

There are many things which enter into the trial of a criminal case which are not in themselves evidence, and it is upon the evidence alone, subject to the rules of law, that you are to make a determination.

In the first place, there is the indictment in the case. The indictment is a formal charge of crime returned by the grand jury of the United States in order to advise the defendant of what charges are made against him, but the grand jury has no function to determine the truth of the charges; it simply sets out the charges in the indictment, and

then the plea of not guilty puts in issue these charges, and the truth of the matter is for you to try, therefore, although you find positive statements in the charges of the indictment you cannot accept them as true until they have been proven beyond a reasonable doubt and there is no inference to be drawn from the fact that an indictment has been returned or that its language is positive that the defendant is guilty of the crimes charged therein.

The function of the judge and the function of the jury in the trial of a case [119] are entirely different and distinct. It is your sole and exclusive duty to pass upon the questions of fact. It is the duty of the Court to rule upon matters of law and to instruct you as to the rules of law that are to be applied in determining the issues of fact. A Federal judge further has the power of summing up the evidence and of indicating to you the connection of the evidence with the charges in the case and the credibility that may be extended to the witnesses. If I do sum up the evidence in this case, Gentlemen, or if I indicate to you in any manner what my opinion as to guilt or innocence is or the credibility of any witness in this case, I want you to remember that you are the sole and exclusive judges of the facts in the case and that although you may know my opinion you are not bound by it in any degree whatsoever.

The rules of law which I lay down for you are final and binding. There are means whereby if I make a mistake as to the rules of law, that error

can be corrected by a higher court, but as between the jury and the judge the rules of law as laid down are final and binding and you must follow them.

Counsel have made arguments in this case and there have been various arguments as to admission of testimony. Whatever counsel say, whether it is in argument to the Court or in argument to you, it is not testimony or evidence. Counsel are officers of the court, they are under a duty to fairly try the case, and this case on both sides has been fairly and ably tried, but the arguments they make to you and statements made in argument are not evidence and insofar as they suggest to you what the rules of law are, those are not binding upon you either.

It is your function and duty to weigh the evidence and take your own memory of what the evidence was and apply that according to the rules of law laid down to you by the Court. The counsel are not witnesses and you are not bound to follow any inference or deduction to be drawn from the testimony which you remember.

Now the defendant in this case has been indicted by the grand jury upon eight counts. The first six of those counts relate to what are called substantive crimes, using the mails to defraud. The last two counts relate to alleged criminal conspiracies. To each of these counts the defendant has pleaded not guilty, and that plea of not guilty as to each count puts in issue all of the material allegations of the

count. Each count charges a separate crime and must be considered separately [120].

In a criminal trial all of the presumptions are in favor of innocence, and in this case as to each count of this indictment the defendant is presumed to be innocent unless and until proven guilty to your satisfaction on the particular count beyond a reasonable doubt. This presumption follows the defendant throughout the trial and up to such point, if ever, as I said before, that it is overcome by evidence to your satisfaction and beyond a reasonable doubt.

The Government is so bound to prove each material allegation of the indictment, and as these counts relate to separate crimes, before conviction can be obtained must so prove each material allegation of each count before a verdict of guilty could be brought in as to that count.

As to all the counts of the indictment, these material allegations are, first that there has been a crime committed as charged in the particular count; second, that the defendant is the person or one of the persons who committed the crime; and third, that the crime, if any, was committed in the State and District of Oregon. As to that particular feature I charge you under the rules of law that there is sufficient connection charged between the crime, if any, and the State and District of Oregon, so you need to pay no further attention to that.

As to the substantive offenses charged in Counts 1 to 6, the Government must prove that there was a

scheme or artifice to defraud and known to the defendant and that the defendant at the time he received the particular check mentioned in the indictment, intended to participate therein and intended specifically to make use of the United States mails in regard thereto, and further, that the United States mails were made use of in pursuance of the fraudulent scheme.

As to the conspiracy counts, the Government must prove that the defendant conspired or confederated or agreed as charged in the particular count of the indictment to violate the section of the statutes of the United States set out in the indictment, that being the section of the statute relating to using the United States mails to defraud.

It is not necessary that the government prove that the crime was committed on the exact date named in the indictment. It is sufficient if it would be proven that the crime was committed at any date within three years prior to the date of the finding of the indictment, and as far as a conspiracy is concerned, that the conspiracy [121] existed within some time within three years prior to the date of the finding of the indictment and even though formed before, it was still in existence during that time, and that during that time the defendant participated in it, if you find he did at all.

I have used the term "reasonable doubt", which I shall now define. The term "reasonable doubt" means such a doubt as may occur in the mind of an ordinary, reasonable, prudent man after a full, fair,

and complete examination of all the facts and circumstances of the case. It must not be a captious or mere possible doubt inconsistent with the evidence which the jury credits and believes, but such a doubt as in the graver and more important affairs of life would cause the ordinary, reasonable, and prudent man to pause and hesitate before acting upon the truth of the matter charged. Absolute demonstration is not required, that is, proof to a mathematical certainty, because such proof is rarely attainable. Moral certainty alone is required, or that degree of proof which produces conviction in an unprejudiced mind.

It is made a violation of the statutes of the United States for one or more persons to conspire, confederate, or agree together to commit any offense against the United States where one of said persons, pursuant to the unlawful agreement, conspiracy, or confederation, does an overt act, that is, an act reasonably intended to assist in carrying out the unlawful agreement and intent.

The statutes of the United States also provide—and this section of the statute is involved in the conspiracy counts:

“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing,

circular, pamphlet, or advertisement, whether addressed to any person residing within or outside of the United States, in any post office, or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the [122] United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be guilty of a crime.”

Now as I have said before, that is the basis of the substantive charges, Counts 1 to 6, and is also the basis of the conspiracy charge because it is definitely charged in each conspiracy count that the conspiracy or agreement was to violate a particular law of the United States, in other words the law which I have just read to you relating to use of the mails to accomplish schemes to defraud.

Now in this case the Court is at this time directing you to find a verdict for the defendant upon Counts 1, 2, 3, 5 and 6 of the indictment because the Court does not find substantive proof upon which you could find under those counts of the indictment that any letter or matter was positively sent through the United States mails. There was proof of the custom of the banks relating to such matter upon a

certain date, but the Court could not determine that the particular matter went by United States mail. The United States has the burden of proving every material allegation and I do not find that that allegation as to those particular counts was proven, therefore on each of those particular counts I direct you to find a verdict of not guilty. That will be placed upon the verdict under the direction of the Court so that there will be no question about where the responsibility lies, Gentlemen, as to that.

As to Count 4 of the indictment, that is charged as a substantive offense of the same type and there was testimony from which you might, if you found it proven beyond a reasonable doubt, find that a letter was mailed in accordance with the charge of that indictment. Therefore I submit that count for your determination without any suggestion upon my part as to which way you find upon the matter charged. You will remember that the charge of that particular count related to a check which was obtained from one H. F. Belter. You have heard the circumstances as to how it was obtained. The basis of this transaction relates to a check drawn by J. C. Adams on September 20th, 1935 for the sum of five hundred dollars, signed H. F. Belter and bearing the endorsement of Joe Mazurosky. The previous counts of the indictment relate to the transmission of this check, and as I have said before, I find no proof of the mailing of this check which is sufficient to submit for your consideration, but this lays the [123] foundation for the charge contained in Count

4 of the indictment. This is Government's Exhibit 4. The particular count is based upon the mailing of another check transmitting the proceeds, according to the testimony, from the First National Bank of Kennewick, Washington to the First National Bank of Portland, Oregon. It is a check for \$499.50 dated September 28th, 1935 and signed by J. L. Bliss, Cashier. That is Government's Exhibit 11.

Now you must find beyond a reasonable doubt before you can bring in a verdict of guilty upon this count that the defendant had some knowledge of the fraudulent scheme which was perpetrated upon Belter, according to the uncontradicted evidence, and that he participated therein and intended by his participation to use the United States mails. He need not directly have posted the letter himself if that was in his contemplation that the United States mails would have to be used by innocent persons to carry out his intent, and of course the bankers in this case are shown by the uncontradicted evidence to have been entirely innocent of these schemes to defraud, so therefore you must take the picture of Joe Mazurosky at the time that he deceived and endorsed this check and find out what his intent and purpose was at the time, and then determine whether or not he intended the United States mails to be used by innocent persons in consummating the scheme, and finally determine whether or not the United States mails were actually used in consummation of the fraudulent design.

You must carefully segregate from your consideration in that regard the other transactions which relate to the conspiracy. They have no relation, and even if you should find that he was engaged in some other conspiracy that does not necessarily mean that he had knowledge of this particular fraudulent scheme, and you must take into consideration who the persons were involved in it, what knowledge, if any, he had of them or of their transactions, and determine from that what knowledge he had and likewise what intent he had.

I will hereafter revert to the question of circumstantial evidence, and I might as well refer to it now. There can be no crime without a criminal intent, but a person is presumed to intend the ordinary, reasonable consequences of any act which he voluntarily does. Intent cannot be established in this case—or knowledge either, for that matter—by direct evidence. The evidence upon which you must always in a criminal case determine intent where intent is required is circumstantial, and [124] in weighing circumstantial evidence I say that before you can base a conviction upon circumstantial evidence alone the circumstances must be inconsistent with every reasonable hypothesis except that of guilt. That is applicable not only to this particular count, but to all the counts of the indictment.

Now then, it has been suggested in argument that the defendant did what he did in good faith as a friend and a business acquaintance of the persons who were shown to have concocted the fraudulent

scheme and that he had no knowledge whatsoever that there was any false or fraudulent scheme in connection with the check or that the acts which he performed operated in furtherance of the scheme. That of course, Gentlemen, is a theory which is for your determination and your determination alone. The issue is whether or not at the time Mazurosky received the check, Exhibit 4, he knew that the same had been delivered in connection with a particular scheme to defraud and that the acts which Mazurosky did and performed in connection with receiving Government's Exhibit No. 4 and in subsequently receiving Government's Exhibit 11 were acts in furtherance of the scheme to defraud, it being essential that the government as part of the case against the defendant Mazurosky establish beyond a reasonable doubt that at the time Mazurosky performed these acts he had guilty knowledge of the nature of the transaction in which he was engaged and the acts which he performed were in furtherance of the alleged scheme to defraud. In determining whether or not at the time Mazurosky received the check and the proceeds thereof and at the time that he received Government's Exhibit 11 he had guilty knowledge of the transaction you are to view the matter as it appeared to Mazurosky at the time with the knowledge that he then had as to the particular persons in that particular transaction and not in the light of other facts or circumstances, if any, which were thereafter brought to his knowledge through subsequent developments.

If the evidence before you establishes beyond a reasonable doubt that at the time Mazurosky received the check, Government's Exhibit 4, and performed other acts in connection with its collection and at the time that the mails were used—if they were used—he knew there was a scheme on foot to defraud and nevertheless performed said acts he was guilty of participating in the scheme, although the evidence may show that he did not know all the details in respect to the scheme. If on the other hand in receiving and handling the check he merely reposed trust and confidence in the transmitter which was violated he is not guilty of having participated in the scheme [125] to defraud, however unjustified he may have been in reposing trust or confidence in that person. Mere carelessness or negligence in trusting or having confidence in other people, however great the carelessness or negligence may be, is not sufficient to constitute a crime such as that charged in the indictment, but if the evidence convinces you beyond a reasonable doubt that Mazurosky knew that the collection of the check or any acts done in connection therewith was in fact in furtherance of a scheme to defraud he could not, by failing to inform himself as to the details of the scheme, avoid criminal responsibility if he in fact knew of the scheme and performed acts in furtherance thereof with intent so to do.

The defendant in order to be convicted on this count must have been a party to the use of the United States mail, but the defendant need not actually have posted the letter or letters or even

actually have caused someone else to post a letter. He must, however, have been connected with such use of the mails in some way, either in intent or by act. However, if he knowingly set on foot or aided in setting on foot a series of acts which would probably result in the United States mails being used to complete the purpose intended and the mails were thereby used he thus caused the use of the mails of the United States as contemplated by the acts of Congress upon which the indictment is based.

If the mails of the United States were in fact used by the First National Bank of Kennewick, Washington and the checks were deposited or received without any knowledge on the part of the banks of the alleged fraudulent scheme, nevertheless if the defendant now on trial caused or knowingly aided in causing the checks to be deposited and handled through the bank with knowledge or reasonable belief that the mails would be used in their collection and that the collection of the check and the cashier's check transmitted as a result thereof was a necessary part of the scheme, then the defendant would be responsible for the use, if any, of the mails by the banks, though the banks and their employees were entirely innocent agents in respect to the alleged scheme to defraud.

I think that that completes the consideration of the one substantive count which is submitted for your consideration. I now turn to the conspiracy counts, which constitute Counts 7 and 8 of the indictment. [126]

In Count 7 the defendant is charged with conspiring, combining, confederating, and agreeing with

Roy L. Martin, and it gives his aliases, Herbert C. Crangle, and his alias, John M. Gray, who you will remember was the witness on the stand, and Thomas A. Andrews. Now the charge of the indictment is that the conspiracy was to commit offenses against the United States, to use the United States mails to defraud in violation of Section 338, Title 18, U. S. C. A., which is the section which I read to you at the beginning of this instruction, Gentlemen, and that the scheme to defraud is that which is set up in the other counts of the indictment, and I need not review that to you; then that there were certain overt acts, and you will note that some of the overt acts relate to the Allen check or the money given by Clara E. Allen, a cashier's check in the sum of five hundred dollars on the Mercantile Bank & Trust Company of Boulder, Colorado. You have heard all the evidence in that connection, Gentlemen. They also relate to the transaction with Christine M. Mershon which was the basis of one of the other counts of the indictment which the Court has taken away from you.

The second conspiracy count relates to conspiracy between the defendant and other persons. It therefore is a separate conspiracy which is charged, and in that charge it is alleged that the defendant conspired, combined, confederated, and agreed with Frank Faircloth, whom you saw on the stand as Nelson, according to the testimony, and William H. Londergan, Jr. The conspiracy in this case is alleged to be to use the United States mails to defraud in violation of the section which I read to you and

this particular matter relates to the charges which were set up in Counts 2, 3, 4, 5, and 6 of the indictment, that is, with relation to the transaction with H. F. Belter.

Now it is necessary for me, Gentlemen, to define to you what a conspiracy is, or what these words "conspire, confederate, combine, and agree" mean. A conspiracy is defined as follows: A conspiracy means a combination of two or more persons by concerted action to accomplish a criminal purpose, and it exists when there is a combination or agreement or understanding, express or implied or tacit between two or more persons for the purpose of committing an unlawful act. It is sufficient to establish a conspiracy that two or more persons in any manner, [127] expressly or silently, come to an understanding to accomplish an unlawful design. Proof of a formal agreement between the parties is not essential to the formation of a conspiracy. Persons entering upon criminal conspiracy do not ordinarily put their agreements in writing, nor do they ordinarily enter into any formal contract or undertaking. The agreement or understanding may be determined from their conduct, what they say, what they do, and in this case you must determine from all that whether there was a concerted action between the persons charged, or some of them, for the accomplishment of an unlawful purpose, and if so that proof would be sufficient to establish the conspiracy. It is not necessary that either or any of the conspirators, if you believe them to be such, should admit that such an agreement or design

existed or that it was for an unlawful purpose or with an intent to commit an offense against the United States. All these things must be determined by you by looking at the conduct, the association together, if any, the relationship as disclosed by the testimony. It is sufficient if you find a concert of action which shows an unlawful design upon the part of any two to commit an unlawful act by legal means or to commit a legal act by illegal means. It is enough if it appears that there is a concert of action of the parties working together understandingly with a common design and for the purpose of accomplishment of a common purpose, and this is true whether each co-conspirator had knowledge of all the details of the conspiracy or the means used, but the conspiracy must be for the purpose either of doing a lawful act by illegal means or an illegal act by lawful means. The material question is whether they did, acting in concert, attempt and agree or combine to accomplish a common purpose of this type, and if so, then they would all be guilty, regardless of the particular part that each was to take in the conspiracy, if any. Direct proof of the organization of a conspiracy is not necessary. It may be inferred by the jury from the facts in the case.

However, the proof of conspiracy is not sufficient alone for conviction. The parties may have had such a design or agreement, but if none of them did anything to carry it out there could be no conviction for conspiracy; in other words, if you should come to that point then the Government would still have to go further and prove that there was an overt act

and one of the overt acts alleged in the particular count of the indictment which was done in pursuance of the unlawful [128] design and was reasonably effective toward carrying it out. The Government, however, does not have to prove that all of the overt acts alleged in either count of the indictment were done, but as to each particular count you must first find beyond a reasonable doubt that the conspiracy existed, that the defendant was a member, and that one of the overt acts was done.

There must of course be two parties to a conspiracy. An individual alone cannot be guilty of conspiracy. In order to constitute conspiracy there must be unity of action or opinion. Both parties must intend to accomplish the same criminal act. After the formation of the conspiracy and during the existence of the conspiracy the act of a member thereof, one of the parties to the agreement, is then the act of all who at the time are acting in concert with the common thing in view. If a person becomes a member of the conspiracy under these rules he then remains a member up to the time that the unlawful conspiracy ceases, that is, until the acts are either accomplished or fail of accomplishment or until he by affirmative act upon his part retracts his membership and agreement and withdraws.

Now under this indictment, however, it is not enough that the conspiracy be directed to the attainment of some unlawful object by unlawful means. It must be directed to the attainment of the particular object specified in the indictment, namely, in this case as is charged, the carrying out of the scheme

to defraud certain people as alleged in the indictment, and further, there must be an agreement that the unlawful means were to be used and that those unlawful means used were in violation of the statute against the use of the United States mails to defraud. If you should believe from the evidence in this case that there was an agreement that the defendant should cash any checks sent to him without any knowledge upon the part of the defendant that the checks were to be the fruits of the particular fraud alleged in the indictment, then as to the conspiracy counts you would have to find a verdict of not guilty, even though you believed the defendant knew or had reason to believe that the checks were obtained in some illegal manner.

Even though the defendant knew or ought to have known that the checks described in the indictment were obtained from the particular illegal enterprise, but the defendant cashed them with no intent and without previous arrangement or agreement to participate in the particular fraud, but for the purpose of either obtaining [129] repayment of money due him by the sender or senders of the checks or for a commission, but you do not find any agreement to participate in the fraud, then your verdict on the particular conspiracy count will be not guilty.

Cashing checks for a commission or percentage of the proceeds, or for any other monetary consideration, is not in itself a crime. As regard the conspiracy counts, there must be in addition, an intent and purpose in cashing such checks to do or assist in carrying out the fraudulent scheme or design of

which the checks are the proceeds and to participate in an agreement, express, implied, or tacit, to that effect, and therefore if you are not convinced by the evidence that the defendant entered a conspiracy intending to aid in the perpetration of a fraud when he cashed the checks, even though you should believe beyond a reasonable doubt that he knew that the checks were obtained in some illicit enterprise, your verdict should be not guilty as to the particular conspiracy count.

Mere knowledge of or acquiescence in the purpose or object of a conspiracy, without any agreement to cooperate or to accomplish such object or purpose, is not enough to constitute one a party to a conspiracy, but if a person does an act with knowledge of the existence of the conspiracy and the act is in furtherance of the criminal design you may take that into consideration in determining whether or not he intended by doing the act thereby to agree to carry out the object of the conspiracy.

Before you would be justified in finding the defendant guilty, you must believe beyond a reasonable doubt that the defendant did something other than to do an act which furthered the object of the conspiracy. The evidence must establish beyond a reasonable doubt before there can be conviction that there was an unlawful agreement and participation therein with knowledge and consent to the agreement upon the part of the defendant, but as I have said before, if the defendant did an unlawful act or an act in furtherance of the conspiracy with knowledge of the purpose and the intent of the

parties thereto you might take that into consideration as to whether the defendant took part in the agreement and by that act intended to join up with the unlawful purpose and design and do the act in furtherance of the design.

It is not necessary that all the conspirators be acquainted with each other. It may be that they have not previously associated together. One conspirator may [130] know only a few of the others, but where one knows that others are acting together to violate the law and intentionally cooperates to further the object of the conspiracy he becomes a party to it, and when men enter into an agreement or conspiracy to accomplish an unlawful or illegal act by unlawful means they become the agents for one another and the act of one in pursuance to a common purpose is deemed the act of all and to make all responsible for the act.

Now Gentlemen, as a whole you have this matter also before you; you understand that the theory of the defense is that Mazurosky was not engaged in any criminal design, that he cashed these checks either without knowledge of the conspiracy or without any intent to participate in any criminal design and simply to further purposes of his own in regard to making money by discounting the checks to a certain amount, knowing that they must have been obtained unlawfully or they wouldn't have been brought to him, or that he did it through friendship of the defendants. On the other hand, you have the circumstances which have been related as to his connection with these parties and certain of these

checks. You have before you certain declarations which have been testified to when investigations were made as to certain of these checks. You may take that all into consideration, Gentlemen, insofar as it relates to either count of the conspiracy and from that you must make up your mind as to the guilt or innocence of the defendant.

The defendant in this case has not taken the stand. That circumstance, however, raises no presumption whatsoever against him in this case. The Government is bound to prove its case beyond a reasonable doubt and it can't ask for any assistance from the defendant. You will try the case from the Government's evidence alone and determine whether or not beyond a reasonable doubt it convinces you of the guilt of the defendant as to each count which I submit for your consideration.

There was certain evidence, Gentlemen, given on the stand as to the transactions which took place which was given by men who, if their testimony is to be believed, were accomplices in this affair of the defendant, in other words they claimed to be co-actors with him in an illegal scheme, and their testimony is to be looked upon with great care and caution. They themselves are involved in these criminal acts and they confess it, and then they tell you about the defendant. Now the only thing I say to you about it is that you should approach that testimony with great [131] care and caution. If in view of the corroboration, if any, that was given or even on account of the attitude of the witnesses on the stand you believe that you can accept their tes-

timony it is proper testimony for your consideration, but you must weigh them and the surrounding circumstances and the amount of corroboration before you can extend to them the credit that is ordinarily given persons who are not claiming to be accomplices.

Likewise certain of these witnesses have admitted that they are under conviction of a felony, and that you may weigh, Gentlemen, in determining whether or not you give to them the credibility that you would to a man who was never previously convicted. The law also says that that is a circumstance to be given great weight in determining the credibility that you give to a witness, whether he has been previously convicted of a crime, because the law says that normally speaking he isn't as entirely credible as a person who has not previously been convicted of a crime. Of course, Gentlemen, the credibility of the witness is for you, and if after looking at him on the stand and considering his testimony and whether there is any corroboration or not you determine that you give him full credit then you may accept his testimony, irrespective of these other matters which I have now suggested to you.

You are the sole and exclusive judges of the facts in the case and of the credibility of all the witnesses. Your power of judging the effect or value of evidence, however, is not arbitrary, but must be exercised with legal discretion and in subordination to the rules of evidence.

The testimony of any one witness to whom you give full credit and belief is sufficient to establish any issue in this case. You are not bound to accept

the testimony of any number of witnesses which does not produce conviction in your minds as against the testimony of a less number or against a presumption or other evidence which does convince you.

Every witness is presumed to speak the truth. That presumption, however, may be overcome by the manner in which he testifies, the interest that he may have in the outcome of the case, or by contradictory evidence. You may take into consideration the attitude of a witness on the stand and the character of the things that he is telling. If a witness has testified falsely in any one material part of his testimony, and if you find that a witness has testified wilfully false then it will [132] by your duty to entirely disregard all the rest of his testimony unless it is corroborated by other evidence which you do believe.

Any fact in the case may be proven by direct or indirect evidence. Direct evidence is that which proves a fact in dispute directly, without any inference or presumption as to its existence. The testimony of an eye witness to a transaction is direct evidence. Indirect evidence is also competent, that is, evidence which tends to prove one fact by proving another but which does not necessarily prove the fact but affords an inference or presumption of its existence. As I have said before, that evidence is entirely competent and sometimes is more convincing than direct evidence, but before you can find a verdict of guilty on any count of this indictment where the evidence is entirely circumstantial then it must be inconsistent with every reasonable hypothesis except that of guilt.

There are certain phases of the testimony here which relate to oral admissions of the defendant. That is competent evidence for your consideration; however, that sort of thing must be viewed with great caution. The defendant himself may have been mistaken or the witness may have misunderstood him or may have somehow misreported what the defendant said. Of course if you do find that the admission was made—or the statement was made in the exact words given to you, then you are entitled to give it great weight, because the defendant better than anyone else knows what his connection with this transaction was.

The evidence should be weighed in the light of the evidence which is within the power of one side to produce and the other to contradict, therefore if you find that one party has produced evidence of less weight when it was within their power to produce evidence stronger and better you have a right to look with distrust upon the evidence offered.

I think that fairly sums up, Gentlemen, the rules of law to apply in this case. I have not attempted any summary of the testimony or any suggestion as to how you should find upon any of the issues in this case, but simply have given you the rules of law, and with that I shall submit the case with entire confidence that you will render a fair verdict.

Are there any exceptions?

Mr. Biggs: No exceptions, Your Honor. [133]

Mr. Strayer: There is one matter in the first part of your Honor's charge; if I understood your Honor correctly you instructed the jury before it could find a verdict of guilty on the substantive

count they must find an intent to use the mails, and later on in your charge I think you instructed differently in that regard, and I thought some confusion may have arisen in the jurors' minds as to what the charge was on the substantive count as to the intent to use the mails.

The Court: I think I will not put any great emphasis on that. I think I will submit it just as the instructions were given.

You will have with you in your jury room, Gentlemen, the indictment in this case, the exhibits which have been introduced in evidence, and two forms of verdict. Now Gentlemen, one of these forms of verdict I won't review with you. It simply says that by direction of the Court you find the defendant not guilty on Counts 1, 2, 3, 5, and 6, but it will have to be signed by your foreman at the time you return the other verdict.

The other verdict on the counts which I am submitting for your determination, omitting the formal portions, reads as follows:

"We, the Jury, duly impaneled and sworn to try the above entitled cause, do find the defendant, Joe Mazurosky, blank guilty as charged in Count four of the indictment herein; blank guilty as charged in Count seven of the indictment herein; and blank guilty as charged in Count eight of the indictment herein. Dated at Medford, Oregon, this blank day of March, 1938. Blank line, foreman."

Now, Gentlemen, if you find that the Government has failed to prove beyond a reasonable doubt any one of these counts which I am submitting for your

determination you will fill the word "not" in the blank before the words "guilty as charged" in the particular count, and if on the other hand you find that the Government has proved its case as to any one of these three counts you will leave that blank empty and allow the wording to stand as it is at present as to that particular count.

In any event, Gentlemen, each of these verdicts will be signed by your foreman alone, and since this is a case that is being tried in the Federal Court you must find a unanimous verdict. [134]

The foregoing Bill of Exceptions contains all the material evidence offered and received on the trial of said cause, including all rulings made during the course of trial which were excepted to by the defendant, and exceptions allowed by the Court.

EDWIN D. HICKS

Attorney for Defendant and
Appellant. [135]

It is hereby certified that on the 18th day of April, 1938, the Honorable James Alger Fee, based upon stipulation of counsel, and for good cause shown, entered an Order allowing defendant to have to and including the 1st day of May, 1938, for settlement and filing of Bill of Exceptions, and Assignments of Error in respect to the within appeal.

It is hereby certified that the foregoing proceedings were had upon the trial of this cause, and that the Bill of Exceptions contains all of the evidence produced at the said trial.

It is further certified that the foregoing Exceptions asked and taken by the defendant, were allowed by the Court, and that the Bill of Exceptions was duly presented within the time fixed by law and the Order of this Court, and is by me duly allowed and signed this 23rd day of April, 1938.

JAMES ALGER FEE,

Judge of The District Court
of the United States, For the
District of Oregon. [136]

State of Oregon,
County of Multnomah—ss.

Due service of the within Bill of Exceptions is hereby accepted in Multnomah County, Oregon, this 16th day of April, 1938, by receiving a copy thereof, duly certified to as such by Edwin D. Hicks, of Attorneys for Defendant and Appellant.

J. MASON DILLARD

Attorney for United States of
America.

[Endorsed]: Lodged April 16, 1938. Filed Apr. 25, 1938.

[Endorsed]: Filed May 2, 1938. Paul P. O'Brien, Clerk. [137]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Joe Mazurosky, being the defendant in the above entitled cause, and the appellant herein, appearing by Edwin D. Hicks, his attorney, and having filed a

notice of appeal, as required by law, that the defendant appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the final order and judgment made and entered in said cause against the said defendant herein, now makes and files, in support of said appeal, the following assignments of error, upon which he will rely for a reversal of said final order and judgment upon the said appeal, and which errors are to the great detriment, injury and prejudice of this defendant, and said defendant says that in the records and proceedings, upon the hearings and determination thereof in the District Court of the United States for the District of Oregon, there is manifest error, in this, to-wit:

Assignment of Error No. 1

The Court erred in over-ruling defendant's motion for a directed verdict as to Counts four, seven and eight of the indictment made at the conclusion of the case after all parties had rested, for the reasons therein set forth:

Mr. Biggs: "The Government having rested and the defendant at this time resting, moves the Court for its order directing a verdict of not guilty as to each of the counts in the indictment, on the ground and for the reason that there is no substantial evidence sufficient to submit to the jury which establishes or tends to establish the connection of the defendant with any [138] scheme or artifice to defraud, or the particular scheme or artifice to defraud described and set forth in each count of the indictment, or the use of the mails pursuant

to said scheme, there being no conscious participation of the defendant in such scheme. With respect to the count of the indictment relating to the defendant's alleged connection with Roy Martin, John Gray, and others, for the further reason that there is no testimony whatsoever connecting the defendant with any criminal device, scheme, intent, or plan on their part, all of the testimony admitted being the testimony of acts or declarations of alleged co-conspirators, and there is an inadequate prima facie showing of a conspiracy.

"The Court: Which count is that, now?"

"Mr. Biggs: That is Count 1 of the indictment, Your Honor, and also Count 7 of the indictment, being the conspiracy count, and for the further ground that there is no substantial evidence that the United States Mails were used by the defendant voluntarily or involuntarily or at all in connection with this.

"Thereupon the following proceedings were had:

"The Court: The Court at this time denies the motion for a directed verdict as to Counts 4, 7 and 8 of the indictment, and grants the motion as to Counts 1, 2, 3, 5 and 6.

"Mr. Biggs: Does the Court desire a verdict to be prepared on those counts?"

"The Court: No, it can be included in the general verdict.

"Mr. Biggs: And may we have an exception to the Court's ruling as to Counts 4, 7 and 8 of the indictment?"

"The Court: Yes."

Assignment of Error No. 2

That the Court erred in permitting the witness for the United States of America, Mr. Frank Nelson, to testify as follows:

Questions by Mr. Dillard: [139]

“Q. How did Mr. Wagner happen to give you a check for Five hundred (\$500.00) Dollars?

“A. I called on Mr. Wagner at his home——

“Mr. Biggs: Just a moment, the defendant objects to the introduction of any testimony concerning the manner or means or time or place of the taking of that check. It is now shown to be set up in the indictment. It is not the basis for one of the charges made in the indictment; it is dated, as already identified, some thirteen years prior to the indictment and some nine years prior to the date the alleged conspiracy commenced, and therefore is too remote to be admitted under the theory of any similar transactions, if that is what is claimed for it.

“Mr. Dillard: It is offered, Your Honor, to show knowledge on the defendant. It will develop that—well, it is offered to show knowledge.

“The Court: The Court will admit the testimony in view of the matters that have been already testified regarding Government’s Exhibit 7.

“Mr. Biggs: May we have an exception to the Court’s ruling?

“The Court: Yes.

“Frank Nelson: I came into possession of the Wagner check, Exhibit 7, under the following circumstances: I called on Mr. Plummer at his home, introduced myself as a local optometrist from Van-

couver, Washington, and examined his eyes and told him that he had a trouble that I really didn't understand myself, that he should consult an eye, ear, nose and throat specialist, and I asked him if he knew anybody in Vancouver or Portland that he was personally acquainted with that he cared to go see, and he said that he didn't, so I told him about a party that was with me that was an eye specialist and that if he would go out and ask him to come in that he might give what information he needed, so he did that. I told him my partner (Dr. Brown) was Dr. Ainsworth. He called Brown into the house and Brown [140] performed an operation for him on his eye. At that time we were using the skin of an egg. He put that on the eye and removed it from the eye, and showed it to him and charged him Six Hundred Seventy-five (\$675.00) Dollars, I think it was. We got two checks, one for One Hundred seventy-five (\$175.00) Dollars, and one for Five hundred (\$500.00) Dollars. The one for \$175.00, Dr. Brown cashed at one of the banks in Vancouver, Washington. I took the other Wagner check to another bank and he refused to cash it, but the banker certified the check. I am referring now to Exhibit 7 for identification. When he refused to cash the check, I gave it to my partner, Dr. Brown, and from that day until last year I never saw the check any more. Dr. Brown was a friend of Mr. Mazurosky as well as myself. He was the gentleman who had the store next door to Mazurosky's store, the optical store." [141]

Assignment of Error No. 3

That the Court erred in permitting reception into the evidence of Exhibit numbered 7, offered and received in behalf of the United States of America under the following circumstances:

Questions by Mr. Dillard:

Mr. Dillard: If Your Honor please, we will offer in evidence Government's Exhibits for identification 4, 5, 7 and 26.

The Court: Any objection?

Mr. Biggs: If the Court please, the defendant objects to the introduction of these checks on the ground and for the reason that there has been no evidence sufficient to connect the defendant with the manner and method and means by which these checks were taken or for any other purpose, and I assume they would be immaterial if they were not offered for the purpose of connecting the defendant with that transaction; as to Exhibit 7, on the further ground and for the further reason that it is in connection with a transaction occurring more than thirteen years prior to the date of the offer, and upon that ground it is too remote to have probative force.

The Court: All these checks have the defendant's signature and they are admissible in evidence. Admitted. Exception allowed.

(The documents heretofore marked Government's Exhibits 4, 5, 7 and 26, respectively, for Identification were thereupon received in evidence.)

There was thereupon received in evidence, Exhibit of the United States of America, numbered 7, which is in words and figures as follows, to-wit:

GOVERNMENT EXHIBIT 7

98-37

Vancouver, Wash. Nov. 14, 1925

Washington Exchange Bank

Payment stopped.

Pay to the

Order of O. A. Plummer \$500.00

Five Hundred 00/100 Dollars

Exactly Five Hundred Dollars Exactly Exactly

HENRY WAGNER

Good for \$500.00

When properly endorsed

Lloyd DuBois

P. M.

Nov. 18, 1925

(Endorsed on Back) O. A. Plummer O. A. Plummer

Henry Wagner C-15297

O. A. Plummer

Joe Mazurosky Cancelled

786 Kearney St.

Be 5581 [142]

Assignment of Error No. 4

That the Court erred in permitting the witness for the United States of America, Mr. Henry Wagner, to testify as follows:

Questions by Mr. Strayer:

Q. Mr. Wagner, will you just tell the jury the circumstances under which you made out and delivered that check?

Mr. Biggs: If the Court please, we object to the introduction of this testimony on the ground that it was to do with a transaction in the absence and not in the presence of this defendant, there being no sufficient foundation made connecting the defendant with the transaction or showing knowledge of the transaction.

The Court: The objection is overruled.

Mr. Biggs: And may we have an exception?

The Court: Exception allowed.

Mr. Biggs: Could a continuing objection to this testimony go on, Your Honor, to prevent the necessity of constant interruption?

The Court: You will have to object to the testimony of each witness.

Mr. Biggs: But it may be a continuing objection?

The Court: As far as the testimony of the particular witness.

Mr. Biggs: Thank you.

There were two men came to my farm on the 14th day of November, 1925, who said they were eye doctors that tried to sell us glasses. I wasn't in need of any glasses, but my brother, William, did need them; his eyes were failing and they examined his eyes and discovered that there was something wrong and finally found it was a cataract—told him it was a cataract, and said that it would have to be removed or else he would go blind, and so he submitted to the operation to remove the imperfection in his eye. Before they did that I asked them what it would cost to remove it and they said it would be nominal, the price would be nominal, and so they

went to work and removed it and when they got through the bill was Seven Hundred Fifty (\$750) Dollars.

They had an instrument about a foot long, a sort of rod, and they worked around in his eye with that and removed something that looked like the white of an egg, and they called that the cataract. That was the operation that was performed. [143] These parties were using the names of Dr. O. A. Plummer and Dr. J. C. Ainsworth. Mr. Plummer was a tall, slim man, rather dark, about 35 or 40 I should judge. I believe I saw him today. The other wasn't near as tall, was older, heavy set with a sloping forehead at a conspicuous angle. The older man performed the operation. When they said they wanted \$750.00 I objected. They said radium was used to remove the cataract and that the value of the radium used in the operation was Six hundred fifty (\$650.00) Dollars. They reduced the bill to Six hundred fifty (\$650.00) Dollars and I wrote out two checks, this one and another for One hundred seventy-five (\$175.00) Dollars, making a total of Six Hundred Seventy-five (\$675.00) Dollars. The checks were handed over to Mr. Plummer. I did not see them after I delivered the checks. One of the checks was *cased*, the \$175.00 one. I next saw the \$500.00 check at Mr. Dubois' in the bank." [144]

Assignment of Error No. 5.

That the Court erred in permitting the witness for the United States of America, Mr. William Wagner, to testify as follows:

Questions by Mr. Strayer:

My name is William Wagner, brother of Henry Wagner, and we live near Vancouver, Washington. I recognize the check you have handed me, Exhibit 7 for identification.

Q. Do you recall the circumstances under which that check was made out and delivered?

A. Yes, sir.

Q. Will you just tell the jury about it?

Mr. Biggs: If the Court please, for the purpose of the record we object to the introduction of this testimony on the grounds assigned with respect to the testimony of the brother.

The Court: The objection is overruled.

Mr. Biggs: And that will go to all the testimony on the further ground of remoteness?

The Court: Overruled. Exception allowed.

Mr. Strayer: Q. Tell us the circumstances under which your brother made out and delivered that check.

Well, this check was written for eye doctors. There were a couple of them, Plummer and Ainsworth, and they examined our eyes and told me I had a cataract on one of my eyes and if it wasn't removed I would go blind in a short time. It scared me, of course, and it scared my brother, and we issued this check in payment for the operation. The check was made out by my brother in my presence.

The check was delivered to Plummer. The check was never paid. I have seen neither of the men since then. The operation didn't help "one bit." [145]

Assignment of Error No. 6

That the Court erred in permitting the witness for the United States of America, Mr. John M. Gray, to testify as follows:

Questions by Mr. Strayer:

Q. What did Martin tell you as to what he had done with the Merson check?

Mr. Biggs: If the Court please, we object to the witness answering that question on the ground that it would be hearsay, there being no sufficient or any prima facie showing of any partnership in crime or otherwise between Mr. Martin and Mr. Mazurosky, and therefore no sufficient foundation laid for the introduction of any statements, declarations, or evidence of any acts of omission or commission done in the absence and out of the presence of the defendant.

The Court: The objection is overruled.

Mr. Biggs: And may we have an exception?

The Court: Yes.

A. My conversation with Roy Martin was that he mailed the check to Joe Mazurosky.

Mr. Strayer: Q. And did he tell you anything about the arrangement with Joe Mazurosky?

Mr. Biggs: If the Court please, may we make the same objection and have the continuing objection to any testimony asked for and given by this witness in connection with statements or evidence of facts or declarations on the part of Martin?

The Court: Yes.

Mr. Biggs: I make the same objection at this time, Your Honor.

The Court: The objection is overruled.

Mr. Biggs: And may I have an exception?

The Court: An exception is allowed.

Mr. Strayer: Q. What did he tell you?

A. It would cost me fifteen per cent (15%) to get the check cashed through Joe Mazurosky.

As I previously stated, my arrangement with Mrs. Martin was that she would go down with me to Joe Mazurosky's and we would obtain this money and I would take my part of the money and Mrs. Martin was to keep his part of the money. [146]

Q. And under your agreement with Martin what percentage of the check were you to receive?

A. I received a total of sixty (60%) per cent.

Q. And what was to be done with the balance of the money?

A. Fifteen (15%) per cent would go to Joe Mazurosky for collection, twenty-five (25%) per cent to Martin and Cragle, and sixty (60%) per cent to Nelson and myself.

We were paying Martin and Crangle twenty-five (25%) per cent for advance information concerning these people.

Referring to the time when I received the Mershon check on October 29th, after having a conversation probably one or two days previous to that with Mr. Martin and Mr. Crangle, they told me circumstances of a fake cataract operation on Mrs. Mershon, or Mr. Mershon, one or the other of them.

I went to the home of these people on this date and made an examination of the party that was supposed to be operated on, I don't recall which one now. I remember explaining that I was there for the purpose of giving them back the money in the event that it wasn't cured, that the doctor that operated on them had had an accident of some kind and probably was killed; anyhow, after my examination I told them it wouldn't be cured without the use of a radium belt and explained to them a radium belt was very valuable, only twelve of them in the United States; the doctor that made them had died with the secret. The windup of the conversation was that they deposited this amount of money with me as surety, one of these belts to be delivered to their home and used for a period of thirty days, and that is how I obtained the check.

To my knowledge there was no such thing as a radium belt. There was nothing more the matter with these people than senility or old age. At the time I talked with them I was using the name, Dr. Pierce. I also went by the names of Miles, Hamilton, Howard, Clayton, Cox and others. I understood that the name T. A. Andrews was the correct name of the party who was with me. He also went by the name of Thomas, Judge Thomas, and I so introduced him to the Mershons. I represented Thomas as an attorney, settling the estate of the doctor who had been killed and who had performed the operation on their eyes. Thomas is at this time in a Federal Penitentiary in [147] Virginia. I understand Roy Martin and Herbert Crangle are in the

Federal penitentiary at Atlanta, Georgia. Crangle usually went by the name of Dr. Avery. Martin, when performing the operations, usually was represented as Dr. Miles.

Referring back to the time when I received the proceeds of the Mershon check, I will state that I met Mr. Mazurosky about a week thereafter, for the first time. I was introduced to him by Roy Martin at the St. Andrews Apartment Hotel in Portland, Oregon.

Q. And what were you doing there at the St. Andrews Apartment Hotel?

A. Mr. Martin was living there at the hotel. I was down there to see him and I just met Mr. Mazurosky, that is all.

The Allen check, Exhibit 3 for identification, which you have handed me was received by me sometime in September, 1934. I went to the home of Clara Allen and her brother somewhere around Boulder, Colorado. The Exhibit is a cashier's check.

Mr. Strayer: Q. And how did you receive possession of it?

A. T. A. Andrews and I drove to the home of Clara Allen and her brother, out of Boulder, Colorado, and I talked to Miss Allen and her brother and performed a so-called fake cataract operation on the brother's eye and went to town to get this money. She drove her car and we followed in another car. She didn't have the money in the bank. They had some Liberty bonds and these were at the bank in the name of the brother and she couldn't obtain these bonds, so she had to go back home and

get an order for them, and it was then too late to get the bonds out of the bank that day so I instructed her to go the following day and get the bonds or the cash money and I would be back in a few days to get it, but I didn't. I waited a couple of weeks and I sent Mr. Andrews out there early on Sunday morning. That day he returned with the check and gave it to me. I received the check from T. A. Andrews about twelve or fifteen days after the date noted on the check. I was working with Andrews at that time.

I performed the operation on Miss Andrews' brother. Due to senility, his vision was dim and I explained to him that I could make him see with radium treatment. I dropped a few drops of Murine eye water into his eye and removed a piece of skin that I had—I was supposed to have removed it—and that was all there was to it. He did have a cataract but I did nothing about it. The check was given me in payment for the [148] operation. I was using either the name of Miles or Pierce, I am not sure which. Andrews was using the name of Thomas. Miss Allen's brother received no benefit from the operation. After receiving the check, I gave it to Roy Martin. He told me he could send it to Portland for collection and it would cost me fifteen (15%) per cent. He told me he was going to send it to Joe Mazurosky. He wrote him a letter and put it in an envelope and dropped it in a mail box in Denver, Colorado. After he mailed the letter, I later received the proceeds of the check. Mr. Martin gave me Five Hundred (\$500) Dollars less fifteen (15%) per cent, which is Seventy-five (\$75)

Dollars, in Seattle—a few dollars less than that because he told me that the money had been wired to him. That was about the first or second week in October, 1934. I went back to see Miss Allen in 1935. When I was there the first time they had two thousand dollars in Liberty bonds and I went back there to get the balance of them if I could. I talked to Miss Allen; found her in the cow pen milking a cow. It was early in the morning. I went in and talked to her and she didn't recognize me. As soon as I began to talk about eyes she told me she had been swindled out of Five Hundred (\$500) Dollars and if I would go down town and talk to the district attorney he would tell me all about it, and so that was all I wanted to know and I drove away. She did not recognize me as one of the men who had been there before. I wore no disguise.

(The check, Government's Exhibit 15 for Identification, was thereupon marked.)

The first time I ever saw the exhibit marked Government's Exhibit 15 for identification was at the trial in Portland. I can't say that I recognize the handwriting. When Martin sent the checks to Joe Mazurosky, he used the name of R. E. Terrell. [149]

Assignment of Error No. 7

The Court erred in denying defendant's Motion for directed verdict as to Counts seven and eight of the indictment, in that the evidence adduced at the trial disclosed but one single conspiracy and the defendant cannot be convicted of two conspiracies upon a showing that there was but one conspiracy in existence. [150]

Assignment of Error No. 8.

The Court erred in submitting count seven of the indictment for consideration by the jury for the reason that said count does not state facts sufficient to constitute a crime, in that:

(a) It is not alleged in said count that the use of the United States Mails was a part of and/or was embraced within the terms of the alleged conspiracy therein set forth.

(b) It appears affirmatively from the allegations of said count that said alleged conspiracy did not embrace or include by its terms the use by said conspirators of the United States Mails in furtherance of the scheme to defraud, set forth in said count.

[151]

Assignment of Error No. 9.

The Court erred in submitting count eight of the indictment for consideration by the jury for the reason that said count does not state facts sufficient to constitute a crime, in that:

(a) It is not alleged in said count that the use of the United States Mails was a part of and/or was embraced within the terms of the alleged conspiracy therein set forth.

(b) It appears affirmatively from the allegations of said count that said alleged conspiracy did not embrace or include by its terms the use by said conspirators of the United States Mails in furtherance of the scheme to defraud, set forth in said count.

[152]

Wherefore, the defendant and appellant prays that the judgment in said cause be reversed and the

cause be remanded with instructions to the trial Court as to further proceedings therein, and for such other and further relief as may be just in the premises.

EDWIN D. HICKS

Attorney for Defendant and
Appellant. [153]

State of Oregon,
County of Multnomah—ss.

Due service of the within Assignment of Errors is hereby accepted in Multnomah County, Oregon, this 20th day of April, 1938, by receiving a copy thereof, duly certified to as such by Edwin D. Hicks, of Attorneys for Defendant and appellant.

J. MASON DILLARD

Attorney for United States of
America.

[Endorsed]: Filed April 20, 1938.

[Endorsed]: Filed May 2, 1938. Paul P. O'Brien.
Clerk. [154]

[Endorsed]: No. 8809. United States Circuit Court of Appeals for the Ninth Circuit. Joe Mazurosky, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed May 2, 1938.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

